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Bill 1

**An Act to provide for
greater Certainty in the
Reconciliation of the
Personal Interests of
Members of the Assembly
and the Executive Council
with their
Duties of Office**

The Hon. I. Scott
Attorney General

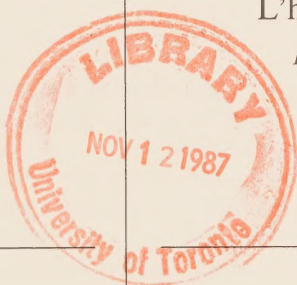
1st Reading November 3rd, 1987
2nd Reading
3rd Reading
Royal Assent

Projet de loi 1

**Loi assurant
une plus grande certitude
quant au rapprochement
des intérêts personnels des
membres de l'Assemblée
et du Conseil des ministres
avec les devoirs
de leurs fonctions**

L'honorable I. Scott
procureur général

1^{re} lecture 3 novembre 1987
2^e lecture
3^e lecture
sanction royale



EXPLANATORY NOTES

The Bill codifies the conduct of members of the Assembly and of the Executive Council that constitutes abuses of office.

They are:

1. Conflict of interest (s. 2).
2. Use of insider information (s. 3).
3. Use of influence of office (s. 4).
4. Acceptance of extra benefits (s. 5).

In addition, it is an abuse of office for a member of the Executive Council to grant a benefit to a former member of the Executive Council or to a person on whose behalf a former member has made representations during the first year after the former member leaves the Executive Council (s. 6). It is also an abuse of office for a member of the Executive Council to continue to carry on business (s. 7).

A Commissioner is established as an officer of the Assembly to act as advisor and authority in respect of breaches of the Act. The Commissioner ensures that the required disclosures are adequate and may conduct inquiries and give opinions respecting compliance with the Act. The Commissioner may also recommend that the Assembly impose specified penalties against a member who contravenes the Act.

It is an offence (s. 17) for a former member of the Executive Council to accept contracts or benefits or make representations in the circumstances described in section 6.

NOTES EXPLICATIVES

Le projet de loi codifie les actes des membres de l'Assemblée législative et du Conseil des ministres qui constituent des abus de fonction. Ces actes sont les suivants :

1. Conflit d'intérêts (art. 2).
2. Usage de renseignements d'initiés (art. 3).
3. Usage de l'influence dérivée des fonctions (art. 4).
4. Acceptation d'avantages supplémentaires (art. 5).

En outre, constitue un abus de fonction le fait pour un membre du Conseil des ministres d'accorder un avantage à un ancien membre du Conseil ou à une personne pour le compte de laquelle un ancien membre a fait des observations durant la première année qui suit son départ du Conseil (art. 6). Constitue également un abus de fonction le fait pour un membre de continuer d'exercer des activités commerciales (art. 7).

Est créé un poste de Commissaire qui est un fonctionnaire de l'Assemblée et qui, à ce titre, conseille et prend des décisions dans le cas où des infractions sont commises à la loi. Le Commissaire s'assure que les divulgations requises sont satisfaisantes, et peut effectuer des enquêtes et donner des avis au sujet de l'observation de la loi. Le Commissaire peut également recommander que l'Assemblée impose des sanctions précises à un membre qui contrevient à la loi.

Constitue une infraction (art. 17) le fait pour un ancien membre du Conseil des ministres d'accepter des contrats ou des avantages ou de faire des observations dans les circonstances visées à l'article 6.

Bill 1**1987**

**An Act to provide for greater Certainty in the
Reconciliation of the Personal Interests of
Members of the Assembly and the Executive Council
with their Duties of Office**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"membre"

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"intérêt
personnel"

"private interest" does not include an interest in a decision,

(a) that is of general public application,

(b) that affects a member as one of a broad class of electors, or

(c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"conjoint"

"spouse" means a person of the opposite sex to whom the member is married or with whom the member is living in a conjugal relationship outside marriage, but does not include a person to whom the member is married if they have made a separation agreement or if their support obligations and family property have been dealt with by a court order.

Conflict of
interest

2. For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest.

Projet de loi 1**1987****Loi assurant une plus grande certitude
quant au rapprochement des intérêts personnels des
membres de l'Assemblée et du Conseil des ministres
avec les devoirs de leurs fonctions**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 Les définitions qui suivent s'appliquent à la présente loi. Définitions

«conjoint» Personne du sexe opposé avec qui le membre est marié ou avec qui il vit dans une union conjugale hors du mariage, à l'exclusion toutefois de la personne avec qui le membre est marié s'ils ont conclu un accord de séparation ou bien si leurs obligations alimentaires et leurs biens familiaux ont fait l'objet d'une ordonnance. «spouse»

«intérêt personnel» Ne comprend pas un intérêt dans une décision qui, selon le cas : «private interest»

- a) est d'application publique en général;
- b) concerne un membre en sa qualité de membre d'une vaste catégorie d'électeurs;
- c) concerne la rémunération et les avantages d'un membre, d'un fonctionnaire ou d'un employé de l'Assemblée législative.

«membre» Membre de l'Assemblée législative ou du Conseil des ministres, ou des deux. «member»

2 Pour l'application de la présente loi, le membre a un conflit d'intérêts lorsqu'il prend une décision ou participe à celle-ci dans l'exécution de ses fonctions et qu'il sait, en prenant cette décision, qu'existe la possibilité de favoriser ses intérêts personnels. Conflit d'intérêts

Insider
information

3. A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

4. A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest.

Accepting
extra benefits

5.—(1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Exception

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incidence of the protocol or social obligations that normally accompany the responsibilities of office.

Disclosure

(3) Where a gift or personal benefit referred to in subsection (2) exceeds \$200 in value, or where the total value received directly or indirectly from one source in any twelve-month period exceeds \$200, the member shall immediately file with the Commissioner a disclosure statement, in the form prescribed by the regulations, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

Former
members of
Executive
Council,
benefits and
lobbying

6.—(1) The Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission) shall not knowingly,

- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council, until twelve months have expired after the date when the former member ceased to hold office;
- (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit;
- (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit.

3 Le membre n'utilise pas les renseignements qu'il obtient dans l'exercice de ses fonctions et qui ne sont pas accessibles au public en général, afin de favoriser ou de chercher à favoriser ses intérêts personnels.

Renseignements
d'initiés

4 Le membre ne fait pas usage de ses fonctions afin de chercher à influencer une décision prise par une autre personne, dans le dessein de favoriser ses intérêts personnels.

Influence

5 (1) Sauf dans le cas d'une indemnisation qu'autorise la loi, le membre n'accepte pas d'honoraires, de dons ni d'avantages personnels qui sont liés, directement ou indirectement, à l'exercice des devoirs de ses fonctions.

Acceptation
d'avantages
supplémentaires

(2) Le paragraphe (1) ne s'applique pas à un don ou à un avantage personnel qui est reçu dans le cadre du protocole ou d'obligations sociales qui accompagnent habituellement les charges de la fonction.

Exception

(3) Si le don ou l'avantage personnel visé au paragraphe (2) a une valeur supérieure à 200 \$, ou si la valeur totale reçue, directement ou indirectement, d'une source au cours d'une période de douze mois est supérieure à 200 \$, le membre dépose immédiatement auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements, qui indique la nature du don ou de l'avantage, sa source et les circonstances dans lesquelles il a été remis et accepté.

Divulgation

6 (1) Le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission) ne doit sciemment :

Avantages
offerts à
d'anciens
membres du
Conseil des
ministres

- a) accorder ni approuver un contrat en faveur d'un ancien membre du Conseil des ministres, ni lui accorder un avantage, tant que douze mois ne se sont pas écoulés à compter de la date où l'ancien membre a cessé d'exercer ses fonctions;
- b) accorder ni approuver un contrat, ni accorder un avantage en faveur d'un ancien membre du Conseil des ministres qui a fait des observations concernant ce contrat ou cet avantage pendant les douze mois qui suivent la date où l'ancien membre a cessé d'exercer ses fonctions;
- c) accorder ni approuver un contrat, ni accorder un avantage en faveur d'une personne pour le compte de laquelle un ancien membre du Conseil des ministres a fait des observations concernant ce contrat ou cet avantage pendant les douze mois qui suivent la

Exception (2) Clauses (1) (a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

Idem (3) Clauses (1) (a) and (b) do not apply if the conditions on which the contract or benefit is awarded, approved or granted to the former member are the same for all persons similarly entitled.

Carrying on business

7.—(1) A member of the Executive Council shall not,

- (a) engage in employment or in the practice of a profession;
- (b) carry on a business, including the management of personal financial interests; or
- (c) hold an office or directorship other than in a social club, religious organization or political party,

except as required or permitted by the responsibilities of being a member of the Executive Council.

Time for compliance

(2) A person who becomes a member of the Executive Council shall comply with subsection (1) before the sixty-first day that follows his or her appointment.

Idem

(3) The Commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension such conditions as the Commissioner considers just.

Trusts

(4) If a member of the Executive Council complies with clause (1) (b) by entrusting his or her business or the management of his or her personal financial interests to one or more trustees,

- (a) the provisions of the trust shall be approved by the Commissioner;
- (b) the trustees shall be persons who are at arm's length with the member and approved by the Commissioner;
- (c) the trustees shall not consult with the member with respect to managing the trust property; and
- (d) the trustees shall report all material changes in assets, liabilities, and financial interests contained in the trust to the member and the Commissioner, in writing, forthwith after the changes have occurred.

date où l'ancien membre a cessé d'exercer ses fonctions.

(2) Les alinéas (1) a) et b) ne s'appliquent pas aux contrats et avantages concernant d'autres devoirs au service de la Couronne. - Exception

(3) Les alinéas (1) a) et b) ne s'appliquent pas si les conditions selon lesquelles le contrat ou l'avantage est accordé ou approuvé en faveur de l'ancien membre, sont les mêmes pour toutes les personnes y ayant semblablement droit. Idem

7 (1) À l'exclusion de ce qui est requis ou permis dans le cadre de ses responsabilités, le membre du Conseil des ministres ne doit pas : Activités commerciales

- a) exercer de profession ni d'emploi;
- b) exercer d'activités commerciales, notamment la gestion d'intérêts financiers personnels;
- c) occuper de poste ni ne faire partie d'un conseil d'administration, sauf dans un club social, une organisation religieuse ou un parti politique.

(2) La personne qui devient membre du Conseil des ministres se conforme au paragraphe (1) avant le soixante et unième jour qui suit sa nomination. Délai

(3) Le Commissaire peut proroger le délai visé au paragraphe (2) en donnant au membre un avis écrit à cet effet. Il peut assortir la prorogation des conditions qu'il estime justes. Idem

(4) Si un membre du Conseil des ministres se conforme à l'alinéa (1) b) en confiant ses activités commerciales ou la gestion de ses intérêts financiers personnels à un ou plusieurs fiduciaires : Fiducies

- a) les dispositions de la fiducie sont approuvées par le Commissaire;
- b) les fiduciaires n'ont pas de lien de dépendance avec le membre et sont approuvés par le Commissaire;
- c) les fiduciaires ne doivent pas s'entretenir avec le membre de la gestion des biens en fiducie;
- d) les fiduciaires font rapport au membre et au Commissaire de tous les changements importants apportés à l'actif, au passif et aux intérêts financiers qui

Procedure on
conflict of
interest

8.—(1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest; and
- (b) withdraw from the meeting without voting or participating in the consideration of the matter.

Idem

(2) A member of the Executive Council who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall request another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision and the member to whom it is referred may act in the matter for the period of time necessary for the purpose.

COMMISSIONER

Commissioner

9.—(1) There shall be a Commissioner who is an officer of the Assembly.

Appointment

(2) The Lieutenant Governor in Council shall appoint a person to the office of Commissioner on the address of the Assembly.

Term of
office

(3) The person appointed shall hold office for a term of five years and may be reappointed for a further term or terms.

Removal

(4) The person appointed as Commissioner may be removed before the expiration of the term of office by the Lieutenant Governor in Council for cause on the address of the Assembly.

Salary

(5) The Commissioner shall be paid such remuneration and allowances as are fixed by the Lieutenant Governor in Council.

Staff

(6) The employees and officers that are necessary for the performance of the duties of the Commissioner shall be members of the staff of the Office of the Assembly.

Annual
report

10. The Commissioner shall report annually upon the affairs of his or her office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

sont déposés en fiducie, par écrit et sans délai après que ces changements ont été faits.

8 (1) Le membre qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui est devant l'Assemblée, le Conseil des ministres ou un de leurs comités est tenu, s'il est présent à la réunion où l'affaire est étudiée :

Procédure en cas de conflit d'intérêts

- a) de divulguer la nature générale du conflit d'intérêts;
- b) de se retirer de la réunion sans exercer son droit de vote ou sans participer à l'étude de l'affaire.

(2) Le membre du Conseil des ministres qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui requiert sa décision, demande à un autre membre du Conseil d'exercer ses devoirs dans cette affaire en vue de prendre la décision. Le membre à qui ces devoirs sont confiés peut les exercer pendant le laps de temps nécessaire à cette fin.

Idem

COMMISSAIRE

9 (1) Est créé un poste de Commissaire qui est un fonctionnaire de l'Assemblée.

Commissaire

(2) Le lieutenant-gouverneur en conseil nomme une personne au poste de Commissaire sur adresse de l'Assemblée.

Nomination

(3) La personne nommée exerce un mandat de cinq ans qui peut être renouvelé.

Mandat

(4) Le lieutenant-gouverneur en conseil, sur adresse de l'Assemblée, peut révoquer la personne nommée en qualité de Commissaire avant l'expiration de son mandat, pour un motif valable.

Révocation

(5) Le Commissaire reçoit la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil.

Traitement

(6) Le personnel nécessaire à l'exécution des fonctions du Commissaire se compose des membres du personnel du bureau de l'Assemblée.

Personnel

10 Chaque année, le Commissaire présente un rapport de ses travaux au président de l'Assemblée qui le fait déposer devant l'Assemblée.

Rapport annuel

DISCLOSURE

Disclosure
statement

11.—(1) Every member shall, within sixty days of being elected, and thereafter annually, file with the Commissioner a disclosure statement in the form prescribed by the regulations.

Contents

(2) The disclosure statement shall contain,

- (a) a statement of the assets, liabilities and financial interests of the member and the member's spouse and minor children;
- (b) a statement of any income the member and the member's spouse and minor children, and private companies as defined in the *Securities Act* controlled by any of them, have received in the preceding twelve months or are entitled to receive in the next twelve months and the source of the income; and
- (c) any other information that is prescribed by the regulations.

R.S.O. 1980,
c. 466Meeting with
Commissioner

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, shall meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice on their obligations under this Act.

Affiliated
corporations

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the Commissioner shall ascertain whether any other corporation is an affiliate of the first-named corporation, as determined under subsections 1 (2) to (6) of the *Securities Act*.

R.S.O. 1980,
c. 466

Idem

(5) If the Commissioner determines that there is an affiliate of the first-named corporation, he or she shall advise the member of the fact, in writing, and shall also mention the fact in the public disclosure statement prepared in accordance with section 12.

Public
disclosure
statement

12.—(1) After meeting with the member, and with the member's spouse if the spouse is available, the Commissioner shall prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the Commissioner, in respect of the member, the spouse and minor children, except,

- (a) assets, liabilities and financial interests having a value of less than \$1,000;

DIVULGATION

11 (1) Chaque membre, dans les soixante jours de son élection, et annuellement par la suite, dépose auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements. État de divulgation

(2) L'état de divulgation comporte :

Teneur

a) un état de l'actif, du passif et des intérêts financiers du membre, de son conjoint et de ses enfants mineurs;

b) un état de tout revenu que le membre, son conjoint, ses enfants mineurs, et les compagnies privées, au sens de la *Loi sur les valeurs mobilières*, dont l'un quelconque d'entre eux a le contrôle, ont reçu au cours des douze mois précédents ou sont en droit de recevoir au cours des douze prochains mois, ainsi que l'indication de la source de ce revenu;

L.R.O. 1980,
chap. 466

c) tout autre renseignement prescrit par les règlements.

(3) Après avoir déposé un état de divulgation, le membre, et son conjoint si ce dernier est disponible, rencontrent le Commissaire afin de s'assurer que la divulgation a été satisfaisante, et d'obtenir des conseils concernant leurs obligations en vertu de la présente loi. Rencontre avec le Commissaire

(4) Si un élément d'actif ou du passif ou un intérêt financier décrit à l'état de divulgation concerne une compagnie, le Commissaire vérifie si une autre compagnie est membre du même groupe, au sens des paragraphes 1 (2) à (6) de la *Loi sur les valeurs mobilières*. Compagnie du même groupe

(5) Si le Commissaire détermine qu'il existe un membre du même groupe que la première compagnie, il en avise le membre de l'Assemblée par écrit. Il mentionne également ce fait dans l'état de divulgation publique qu'il prépare conformément à l'article 12. Idem

12 (1) Après avoir rencontré le membre, et son conjoint si ce dernier est disponible, le Commissaire établit un état de divulgation publique faisant état de tous les renseignements pertinents fournis par le membre, et par le conjoint si ce dernier a rencontré le Commissaire, concernant le membre, son conjoint et ses enfants mineurs, à l'exclusion de ce qui suit :

État de divulgation publique

a) l'actif, le passif et les intérêts financiers dont la valeur est inférieure à 1 000 \$;

- (b) the source of income where the income paid from the source has a value of less than \$1,000 in any twelve-month period;
- (c) the amount of income of the member's spouse or minor children or of a private company controlled by the spouse or a minor child where the income is paid from a source other than directly from a ministry or an agency, board or commission of the government;
- (d) the municipal address or legal description of real property that is primarily for the residential or recreational use of the member or the member's spouse or minor children;
- (e) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes;
- (f) the amount of cash on hand or on deposit with a chartered bank, trust company or other financial institution in Ontario that is lawfully entitled to accept deposits;
- (g) the amount of Canada Savings Bonds and other investments or securities of fixed value issued or guaranteed by any level of government in Canada or an agency of such government;
- (h) the value of registered retirement savings plans that are not self-administered;
- (i) the amount invested in open-ended mutual funds;
- (j) the value of guaranteed investment certificates or other similar financial instruments;
- (k) the value of annuities and life insurance policies; and
- (l) the value of pension rights.

Exception

(2) The Commissioner may except from the public disclosure statement prepared under subsection (1) the source of income received by a member's spouse or minor child in respect of services that are customarily provided on a confidential basis.

- b) la source de revenu, si ce revenu est inférieur à 1 000 \$ au cours d'une période de douze mois;
- c) le montant du revenu du conjoint, des enfants mineurs du membre, ou d'une compagnie privée que contrôle le conjoint ou un enfant mineur, si ce revenu provient d'une source autre que directement d'un ministère, d'un organisme, d'un conseil ou d'une commission du gouvernement;
- d) l'adresse municipale ou la description légale d'un bien immeuble utilisé essentiellement à des fins de résidence ou de loisir par le membre, son conjoint ou ses enfants mineurs;
- e) les biens meubles utilisés à des fins de transport, domestiques, éducatives, sociales, décoratives ou de loisirs;
- f) le montant de l'argent en caisse ou en dépôt dans une banque à charte, compagnie de fiducie ou autre institution financière en Ontario légitimement autorisée à accepter des dépôts;
- g) le montant d'obligations d'épargne du Canada et d'autres placements ou valeurs mobilières à valeur fixe, émis ou garantis par un palier de gouvernement au Canada ou l'un de ses organismes;
- h) la valeur des régimes enregistrés d'épargne-retraite qui ne sont pas autogérés;
- i) le montant investi dans des compagnies d'investissement à capital variable;
- j) la valeur des certificats de placement garantis ou d'autres effets financiers semblables;
- k) la valeur de rentes et de polices d'assurance-vie;
- l) la valeur des droits à une pension.

(2) Le Commissaire peut soustraire de l'état de divulgation publique établi en vertu du paragraphe (1), la source du revenu que le conjoint ou l'enfant mineur du membre a reçu en ce qui concerne des services habituellement fournis confidentiellement. Exception

Content

(3) The public disclosure statement shall contain a statement of the nature of the assets referred to in clauses (1) (f) to (1) and the name and location of persons or institutions against whom the assets are held.

Idem

(4) The public disclosure statement shall contain a statement of any gifts or benefits that have been disclosed to the Commissioner under subsection 5 (3).

Filing

(5) The Commissioner shall, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who shall make it available for examination by the public.

Commissioner's
opinions and
advice

13.—(1) A member may, by application in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the obligations of the member under this Act.

Inquiries

(2) The Commissioner may make such inquiries as the Commissioner considers appropriate and provide the member with a written opinion and recommendations.

Confidentiality

(3) The opinion and recommendations of the Commissioner are confidential, but may be released by the member or with the consent of the member in writing.

Commissioner's
opinion on
referred
question

14.—(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

Idem

(2) The Legislative Assembly may, by resolution, request that the Commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act.

Idem

(3) The Executive Council may request that the Commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of this Act.

Inquiry by
Assembly

(4) Where a matter has been referred to the Commissioner under subsection (1) or (2), the Legislative Assembly or a committee thereof shall not conduct an inquiry into the matter.

(3) L'état de divulgation publique comporte une déclaration de la nature des éléments d'actif visés aux alinéas (1) f) à l), ainsi que les noms et lieux de personnes ou d'établissements à l'égard desquels l'actif est détenu. Teneur

(4) L'état de divulgation publique comporte une déclaration des dons ou avantages qui ont été divulgués au Commissaire en vertu du paragraphe 5 (3). Idem

(5) Dès que cela est possible, le Commissaire dépose l'état de divulgation publique auprès du greffier de l'Assemblée législative qui le met à la disposition du public pour examen. Dépôt

13 (1) Un membre peut, sur demande écrite, demander que le Commissaire donne un avis et formule des recommandations sur une affaire qui a trait aux obligations du membre en vertu de la présente loi. Avis et conseils du Commissaire

(2) Le Commissaire peut faire les enquêtes qu'il estime pertinentes, et fournir au membre, par écrit, son avis et ses recommandations. Enquête

(3) L'avis et les recommandations du Commissaire sont confidentiels. Ils peuvent toutefois être communiqués par le membre ou avec le consentement écrit de celui-ci. Confidentialité

14 (1) Un membre qui a des motifs raisonnables et probables de croire qu'un autre membre enfreint la présente loi peut, sur demande écrite qui énonce les motifs de sa conviction ainsi que la nature de l'infraction prétendue, demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par l'autre membre. Avis du Commissaire sur un renvoi

(2) L'Assemblée législative peut, par voie de résolution, demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par un membre. Idem

(3) Le Conseil des ministres peut demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par l'un de ses membres. Idem

(4) Si une affaire a été transmise au Commissaire en vertu du paragraphe (1) ou (2), l'Assemblée législative ou l'un de ses comités n'enquête pas sur cette affaire. Enquête par l'Assemblée

Inquiry

15.—(1) Upon receiving a request under section 14, and on giving the member concerned reasonable notice, the Commissioner may conduct an inquiry.

Idem

R.S.O. 1980,
c. 411

(2) Where the request for an opinion is made under subsection 14 (1) or (2), the Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act.

Report to
Speaker

(3) Where the request for an opinion is made under subsection 14 (1) or (2), the Commissioner shall report his or her opinion to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

Report to
Lieutenant
Governor in
Council

(4) Where the request for an opinion is made under subsection 14 (3), the Commissioner shall report his or her opinion to the Clerk of the Executive Council.

Penalties

R.S.O. 1980,
c. 411

16.—(1) Where the Commissioner conducts an inquiry under Parts I and II of the *Public Inquiries Act* for the purposes of subsection 14 (1) or (2) and finds that the member has contravened section 3, 4, 5, 6, 7 or 8, or has refused to file a disclosure statement within the time provided by section 11, the Commissioner may recommend in the report that is laid before the Assembly,

- (a) that the member be reprimanded;
- (b) that the member pay a fine in an amount recommended by the Commissioner, but not exceeding \$5,000;
- (c) that the member pay compensation in respect of damage suffered by another person as a result of the member's contravention, in such amount as is specified by the Commissioner;
- (d) that the member's seat be declared vacant until an election is held in the member's electoral district,

or any combination of them.

Order of
Assembly

R.S.O. 1980,
c. 235

(2) The Assembly may order the imposition of the recommendation of the Commissioner under subsection (1) or may reject the recommendation, and sections 45 and 48 of the *Legislative Assembly Act* apply in the same manner as to a contempt of the Assembly, except the power to further inquire into the contravention or to impose a punishment other than the one recommended.

15 (1) Après avoir reçu une demande en vertu de l'article 14 et après avoir donné un avis suffisant au membre visé, le Commissaire peut faire une enquête. Enquête

(2) Si la demande d'avis est faite en vertu du paragraphe 14 (1) ou (2), le Commissaire peut choisir d'exercer les pouvoirs conférés à une commission par les parties I et II de la *Loi sur les enquêtes publiques*, auquel cas, elles s'appliquent à l'enquête de la même façon que s'il s'agissait d'une enquête en vertu de cette loi. Idem
L.R.O. 1980,
chap. 411

(3) Si la demande d'avis est faite en vertu du paragraphe 14 (1) ou (2), le Commissaire présente un rapport de son avis au président qui le fait déposer devant l'Assemblée. Rapport au
président de
l'Assemblée

(4) Si la demande d'avis est faite en vertu du paragraphe 14 (3), le Commissaire fait rapport de son avis au greffier du Conseil des ministres. Rapport au
lieutenant-
gouverneur
en conseil

16 (1) Si le Commissaire fait une enquête en vertu des parties I et II de la *Loi sur les enquêtes publiques* aux fins du paragraphe 14 (1) ou (2), et constate que le membre a contrevenu à l'article 3, 4, 5, 6, 7 ou 8, ou a refusé de déposer un état de divulgation dans le délai prévu à l'article 11, il peut recommander, dans le rapport déposé devant l'Assemblée, une ou plusieurs des mesures suivantes : Pénalité
L.R.O. 1980,
chap. 411

- a) que le membre soit réprimandé;
- b) qu'il paie l'amende recommandée par le Commissaire, qui ne peut être supérieure à 5 000 \$;
- c) qu'il verse une indemnisation dont le Commissaire précise le montant, pour le dommage qu'a subi une autre personne, à la suite de la contravention du membre;
- d) qu'il ait son siège déclaré vacant jusqu'à ce qu'une élection soit tenue dans la circonscription électorale du membre.

(2) L'Assemblée peut ordonner l'imposition des mesures que recommande le Commissaire en vertu du paragraphe (1) ou rejeter ces recommandations. Les articles 45 et 48 de la *Loi sur l'Assemblée législative* s'appliquent de la même façon que dans le cas d'outrage à l'Assemblée, sauf qu'il n'est pas possible de pousser plus avant l'enquête relative à la contravention, ou d'imposer une sanction autre que celle qui est recommandée. Ordre de
l'Assemblée

L.R.O. 1980,
chap. 235

Offence

17.—(1) A former member of the Executive Council shall not, unless twelve months have expired after the date when he or she ceased to hold office,

- (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission);
- (b) make representations on his or her own behalf with respect to such a contract or benefit;
- (c) make representations on another person's behalf with respect to such a contract or benefit.

Exception

(2) Clauses (1) (a) and (b) do not apply if the contract or benefit is in respect of further duties in the service of the Crown, or if the contract or benefit is awarded, approved or granted on conditions that are the same for all persons similarly entitled.

Penalty

(3) A person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine of not more than \$5,000.

Regulations

18. The Commissioner may, subject to the approval of the Lieutenant Governor in Council, make regulations prescribing any matter that is referred to in this Act as prescribed by the regulations.

Commence-
ment

19.—(1) This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Filing of
disclosure
statements

(2) Members who are in office when this Act comes into force shall file the disclosure statement required by section 11 within sixty days after this Act comes into force.

Short title

20. The short title of this Act is the *Members' Conflict of Interest Act, 1987*.

17 (1) À moins que douze mois ne se soient écoulés à compter de la date où il a cessé d'exercer ses fonctions, l'ancien membre du Conseil des ministres ne doit pas :

Infraction

- a) accepter un contrat ni un avantage qui sont accordés ou approuvés par le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission);
- b) faire des observations pour son propre compte concernant un tel contrat ou avantage;
- c) faire des observations pour le compte d'autrui concernant un tel contrat ou avantage.

(2) Les alinéas (1) a) et b) ne s'appliquent pas si le contrat ou l'avantage concerne d'autres devoirs au service de la Couronne, ou qu'il est accordé ou approuvé selon des conditions qui sont les mêmes pour toutes les personnes y ayant semblablement droit.

Exception

(3) La personne qui contrevient au paragraphe (1) est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

Peine

18 Sous réserve de l'approbation du lieutenant-gouverneur en conseil, le Commissaire peut, par règlement, prescrire une question mentionnée dans la présente loi comme étant prescrite par les règlements.

Règlements

19 (1) La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en vigueur

(2) Les membres en fonction lors de l'entrée en vigueur de la présente loi déposent l'état de divulgation requis par l'article 11 dans les soixante jours de l'entrée en vigueur de la présente loi.

Dépôt des états de divulgation

20 Le titre abrégé de la présente loi est *Loi de 1987 sur les conflits d'intérêts des membres de l'Assemblée*.

Titre abrégé

Bill 1

↙
**An Act respecting
Conflicts of Interest
of Members of the
Assembly and the
Executive Council** ↗

The Hon. I. Scott
Attorney General

1st Reading November 3rd, 1987
2nd Reading December 2nd, 1987
3rd Reading
Royal Assent

*(Reprinted as amended by
the Legislative Assembly Committee)*

Projet de loi 1

↙
**Loi concernant
les conflits d'intérêts
des membres de
l'Assemblée et du
Conseil des ministres** ↗

L'honorable I. Scott
procureur général

1^{re} lecture 3 novembre 1987
2^e lecture 2 décembre 1987
3^e lecture
sanction royale

*(Réimprimé tel que modifié par le
Comité permanent sur l'Assemblée
législative)*

EXPLANATORY NOTES

The Bill codifies the conduct of members of the Assembly and of the Executive Council that constitutes abuses of office.

They are:

1. Conflict of interest (s. 2).
2. Use of insider information (s. 3).
3. Use of influence of office (s. 4).
4. Acceptance of extra benefits (s. 6).

In addition, it is an abuse of office for a member of the Executive Council to grant a benefit to a former member of the Executive Council or to a person on whose behalf a former member has made representations during the first year after the former member leaves the Executive Council (s. 7). It is also an abuse of office for a member of the Executive Council to continue to carry on business (s. 8).

A Commissioner is established as an officer of the Assembly to act as advisor and authority in respect of breaches of the Act. The Commissioner ensures that the required disclosures are adequate and may conduct inquiries and give opinions respecting compliance with the Act. The Commissioner may also recommend that the Assembly impose specified penalties against a member who contravenes the Act.

It is an offence (s. 18) for a former member of the Executive Council to accept contracts or benefits or make representations in the circumstances described in section 7.

The Bill does not prohibit the activities in which members normally engage on behalf of constituents (s. 5).

NOTES EXPLICATIVES

Le projet de loi codifie les actes des membres de l'Assemblée législative et du Conseil des ministres qui constituent des abus de fonction. Ces actes sont les suivants :

1. Conflit d'intérêts (art. 2).
2. Usage de renseignements d'initiés (art. 3).
3. Usage de l'influence dérivée des fonctions (art. 4).
4. Acceptation d'avantages supplémentaires (art. 6).

En outre, constitue un abus de fonction le fait pour un membre du Conseil des ministres d'accorder un avantage à un ancien membre du Conseil ou à une personne pour le compte de laquelle un ancien membre a fait des observations durant la première année qui suit son départ du Conseil (art. 7). Constitue également un abus de fonction le fait pour un membre de continuer d'exercer des activités commerciales (art. 8).

Est créé un poste de Commissaire qui est un fonctionnaire de l'Assemblée et qui, à ce titre, conseille et prend des décisions dans le cas où des infractions sont commises à la loi. Le Commissaire s'assure que les divulgations requises sont satisfaisantes, et peut effectuer des enquêtes et donner des avis au sujet de l'observation de la loi. Le Commissaire peut également recommander que l'Assemblée impose des sanctions précises à un membre qui contrevient à la loi.

Constitue une infraction (art. 18) le fait pour un ancien membre du Conseil des ministres d'accepter des contrats ou des avantages ou de faire des observations dans les circonstances visées à l'article 7.

Le projet de loi n'interdit pas les activités qu'exercent normalement les membres pour le compte des électeurs (art. 5).

Bill 1

1987



An Act respecting Conflicts of Interest of Members of the Assembly and the Executive Council



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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

 1. In this Act,

“enfant”

“child” includes a person whom a member has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; 

“membre”

“member” means a member of the Legislative Assembly or of the Executive Council, or both;

Projet de loi 1

1987



**Loi concernant les conflits d'intérêts
des membres de l'Assemblée
et du Conseil des ministres**



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21. Titre abrégé

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 Les définitions qui suivent s'appliquent à la présente loi.

Définitions



«conjoint» Conjoint du membre au sens de la partie III de la *Loi de 1986 sur le droit de la famille*, à l'exclusion toutefois de la personne avec qui le membre est marié s'ils ont conclu un accord de séparation ou si leurs obligations alimentaires et leurs biens familiaux ont fait l'objet d'une ordonnance.

«spouse»

1986, chap. 4

«enfant» S'entend en outre de la personne dont le membre a manifesté l'intention bien arrêtée de la traiter comme s'il s'agissait d'un enfant de sa famille, sauf si cette personne est placée, contre valeur, dans un foyer d'accueil par celui qui en a la garde légitime.

«child»



"intérêt
personnel"

"private interest" does not include an interest in a decision,

- (a) that is of general public application,
- (b) that affects a member as one of a broad class of electors, or
- (c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;



"conjoint"
1986, c. 4

"spouse" means a person who is the member's spouse within the meaning of Part III of the *Family Law Act, 1986*, but does not include a person to whom the member is married if they have made a separation agreement or if their support obligations and family property have been dealt with by a court order.



Conflict of
interest

2. For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest.

Insider
information

3. A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

4. A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest.



Activities on
behalf of
constituents

5. This Act does not prohibit the activities in which members normally engage on behalf of constituents.



Accepting
extra benefits

6.—(1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Exception

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

Disclosure

(3) Where a gift or personal benefit referred to in subsection (2) exceeds \$200 in value, or where the total value

«intérêt personnel» Ne comprend pas un intérêt dans une décision qui, selon le cas : «private interest»

- a) est d'application publique en général;
- b) concerne un membre en sa qualité de membre d'une vaste catégorie d'électeurs;
- c) concerne la rémunération et les avantages d'un membre, d'un fonctionnaire ou d'un employé de l'Assemblée législative.

«membre» Membre de l'Assemblée législative ou du Conseil des ministres, ou des deux. «member»

2 Pour l'application de la présente loi, le membre a un conflit d'intérêts lorsqu'il prend une décision ou participe à celle-ci dans l'exécution de ses fonctions et qu'il sait, en prenant cette décision, qu'existe la possibilité de favoriser ses intérêts personnels. Conflit d'intérêts

3 Le membre n'utilise pas les renseignements qu'il obtient dans l'exercice de ses fonctions et qui ne sont pas accessibles au public en général, afin de favoriser ou de chercher à favoriser ses intérêts personnels. Renseignements d'initiés

4 Le membre ne fait pas usage de ses fonctions afin de chercher à influencer une décision prise par une autre personne, dans le dessein de favoriser ses intérêts personnels. Influence

5 La présente loi n'interdit pas les activités qu'exercent normalement les membres pour le compte des électeurs. Activités exercées pour le compte d'électeurs

6 (1) Sauf dans le cas d'une indemnisation qu'autorise la loi, le membre n'accepte pas d'honoraires, de dons ni d'avantages personnels qui sont liés, directement ou indirectement, à l'exercice des devoirs de ses fonctions. Acceptation d'avantages supplémentaires

(2) Le paragraphe (1) ne s'applique pas à un don ou à un avantage personnel qui est reçu dans le cadre du protocole ou d'obligations sociales qui accompagnent habituellement les charges de la fonction. Exception

(3) Si le don ou l'avantage personnel visé au paragraphe (2) a une valeur supérieure à 200 \$, ou si la valeur totale reçue, directement ou indirectement, d'une source au cours d'une période de douze mois est supérieure à 200 \$, le membre dépose immédiatement auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements, qui Divulgation

received directly or indirectly from one source in any twelve-month period exceeds \$200, the member shall immediately file with the Commissioner a disclosure statement, in the form prescribed by the regulations, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

Former
members of
Executive
Council,
benefits and
lobbying

7.—(1) The Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission) shall not knowingly,

- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council, until twelve months have expired after the date when the former member ceased to hold office;
- (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit;
- (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit.

Exception

(2) Clauses (1) (a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

Idem

(3) Clauses (1) (a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

Carrying on
business

8.—(1) A member of the Executive Council shall not,

- (a) engage in employment or in the practice of a profession;
- (b) carry on a business; or
- (c) hold an office or directorship other than in a social club, religious organization or political party,

except as required or permitted by the responsibilities of being a member of the Executive Council.

indique la nature du don ou de l'avantage, sa source et les circonstances dans lesquelles il a été remis et accepté.

7 (1) Le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission) ne doit sciemment :

Avantages
offerts à
d'anciens
membres du
Conseil des
ministres

- a) accorder ni approuver un contrat en faveur d'un ancien membre du Conseil des ministres, ni lui accorder un avantage, tant que douze mois ne se sont pas écoulés à compter de la date où l'ancien membre a cessé d'exercer ses fonctions;
- b) accorder ni approuver un contrat, ni accorder un avantage en faveur d'un ancien membre du Conseil des ministres qui a fait des observations concernant ce contrat ou cet avantage pendant les douze mois qui suivent la date où l'ancien membre a cessé d'exercer ses fonctions;
- c) accorder ni approuver un contrat, ni accorder un avantage en faveur d'une personne pour le compte de laquelle un ancien membre du Conseil des ministres a fait des observations concernant ce contrat ou cet avantage pendant les douze mois qui suivent la date où l'ancien membre a cessé d'exercer ses fonctions.

(2) Les alinéas (1) a) et b) ne s'appliquent pas aux contrats et avantages concernant d'autres devoirs au service de la Couronne.

Exception

(3) Les alinéas (1) a), b) et c) ne s'appliquent pas si les conditions selon lesquelles le contrat ou l'avantage est accordé ou approuvé sont les mêmes pour toutes les personnes y ayant semblablement droit.

Idem

8 (1) À l'exclusion de ce qui est requis ou permis dans le cadre de ses responsabilités, le membre du Conseil des ministres ne doit pas :

Activités
commerciales

- a) exercer de profession ni d'emploi;
- b) exercer d'activités commerciales;
- c) occuper de poste ni ne faire partie d'un conseil d'administration, sauf dans un club social, une organisation religieuse ou un parti politique.

Time for
compliance

(2) A person who becomes a member of the Executive Council shall comply with subsection (1) before the sixty-first day that follows his or her appointment.

Idem

(3) The Commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension such conditions as the Commissioner considers just.

Trusts

(4) If a member of the Executive Council complies with clause (1) (b) by entrusting his or her business to one or more trustees,

- (a) the provisions of the trust shall be approved by the Commissioner;
- (b) the trustees shall be persons who are at arm's length with the member and approved by the Commissioner;
- (c) the trustees shall not consult with the member with respect to managing the trust property; and
- (d) the trustees shall report all material changes in assets, liabilities, and financial interests contained in the trust to the member and the Commissioner, in writing, forthwith after the changes have occurred.

Routine
personal
financial
interests

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on
conflict of
interest

2.—(1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest; and
- (b) withdraw from the meeting without voting or participating in the consideration of the matter.

Idem

(2) A member of the Executive Council who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall request another member of the Executive Council to perform the

(2) La personne qui devient membre du Conseil des ministres se conforme au paragraphe (1) avant le soixante et unième jour qui suit sa nomination. Délai

(3) Le Commissaire peut proroger le délai visé au paragraphe (2) en donnant au membre un avis écrit à cet effet. Il peut assortir la prorogation des conditions qu'il estime justes. Idem

(4) Si un membre du Conseil des ministres se conforme à l'alinéa (1) b) en confiant ses activités commerciales à un ou plusieurs fiduciaires : Fiducies

- a) les dispositions de la fiducie sont approuvées par le Commissaire;
- b) les fiduciaires n'ont pas de lien de dépendance avec le membre et sont approuvés par le Commissaire;
- c) les fiduciaires ne doivent pas s'entretenir avec le membre de la gestion des biens en fiducie;
- d) les fiduciaires font rapport au membre et au Commissaire de tous les changements importants apportés à l'actif, au passif et aux intérêts financiers qui sont déposés en fiducie, par écrit et sans délai après que ces changements ont été faits.

(5) Pour l'application du présent article, la gestion d'intérêts financiers personnels d'ordre courant ne constitue pas des activités commerciales. Intérêts financiers personnels d'ordre courant

2 (1) Le membre qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui est devant l'Assemblée, le Conseil des ministres ou un de leurs comités est tenu, s'il est présent à la réunion où l'affaire est étudiée : Procédure en cas de conflit d'intérêts

- a) de divulguer la nature générale du conflit d'intérêts;
- b) de se retirer de la réunion sans exercer son droit de vote ou sans participer à l'étude de l'affaire.

(2) Le membre du Conseil des ministres qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui requiert sa décision, demande à un autre membre du Conseil d'exercer ses devoirs dans cette affaire en vue de Idem

member's duties in the matter for the purpose of making the decision and the member to whom it is referred may act in the matter for the period of time necessary for the purpose.

COMMISSIONER

- 10.**—(1) There shall be a Commissioner who is an officer of the Assembly.
- (2) The Lieutenant Governor in Council shall appoint a person to the office of Commissioner on the address of the Assembly.
- (3) The person appointed shall hold office for a term of five years and may be reappointed for a further term or terms.
- (4) The person appointed as Commissioner may be removed before the expiration of the term of office by the Lieutenant Governor in Council for cause on the address of the Assembly.
- (5) The Commissioner shall be paid such remuneration and allowances as are fixed by the Lieutenant Governor in Council.
- (6) The employees and officers that are necessary for the performance of the duties of the Commissioner shall be members of the staff of the Office of the Assembly.
- 11.** The Commissioner shall report annually upon the affairs of his or her office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

DISCLOSURE

- 12.**—(1) Every member shall, within sixty days of being elected, and thereafter annually, file with the Commissioner a disclosure statement in the form prescribed by the regulations.
- (2) The disclosure statement shall contain,
- (a) a statement of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private companies as defined in the *Securities Act* controlled by any of them;
 - (b) a statement of any income the member and the member's spouse and minor children, and private companies as defined in the *Securities Act* controlled by any of them, have received in the preced-

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prendre la décision. Le membre à qui ces devoirs sont confiés peut les exercer pendant le laps de temps nécessaire à cette fin.

COMMISSAIRE

10 (1) Est créé un poste de Commissaire qui est un fonctionnaire de l'Assemblée. Commissaire

(2) Le lieutenant-gouverneur en conseil nomme une personne au poste de Commissaire sur adresse de l'Assemblée. Nomination

(3) La personne nommée exerce un mandat de cinq ans qui peut être renouvelé. Mandat

(4) Le lieutenant-gouverneur en conseil, sur adresse de l'Assemblée, peut révoquer la personne nommée en qualité de Commissaire avant l'expiration de son mandat, pour un motif valable. Révocation

(5) Le Commissaire reçoit la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil. Traitement

(6) Le personnel nécessaire à l'exécution des fonctions du Commissaire se compose des membres du personnel du bureau de l'Assemblée. Personnel

11 Chaque année, le Commissaire présente un rapport de ses travaux au président de l'Assemblée qui le fait déposer devant l'Assemblée. Rapport annuel

DIVULGATION

12 (1) Chaque membre, dans les soixante jours de son élection, et annuellement par la suite, dépose auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements. État de divulgation

(2) L'état de divulgation comporte : Teneur

a) un état de l'actif, du passif et des intérêts financiers du membre, de son conjoint et de ses enfants mineurs, ainsi que des compagnies privées au sens de la *Loi sur les valeurs mobilières* dont l'un quelconque d'entre eux a le contrôle;

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b) un état de tout revenu que le membre, son conjoint, ses enfants mineurs, et les compagnies privées, au sens de la *Loi sur les valeurs mobilières*, dont l'un quelconque d'entre eux a le contrôle, ont reçu au

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ing twelve months or are entitled to receive in the next twelve months and the source of the income; and

- (c) any other information that is prescribed by the regulations.

Meeting with
Commissioner

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, shall meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice on the member's obligations under this Act.

Affiliated
corporations

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the Commissioner shall ascertain whether any other corporation is an affiliate of the first-named corporation, as determined under subsections 1 (2) to (6) of the *Securities Act*.

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Idem

(5) If the Commissioner determines that there is an affiliate of the first-named corporation, he or she shall advise the member of the fact, in writing, and shall also mention the fact in the public disclosure statement prepared in accordance with section 13.

Public
disclosure
statement

13.—(1) After meeting with the member, and with the member's spouse if the spouse is available, the Commissioner shall prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the Commissioner, in respect of the member, the spouse and minor children, except,

- (a) assets, liabilities and financial interests having a value of less than \$1,000;
- (b) the source of income where the income paid from the source has a value of less than \$1,000 in any twelve-month period;
- (c) the value of the assets, financial interests and liabilities of the member's spouse and minor children and of private companies as defined in the *Securities Act* controlled by the spouse or by a child;
- (d) the amount of income of the member's spouse or minor children or of a private company controlled by the spouse or a minor child where the income is

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cours des douze mois précédents ou sont en droit de recevoir au cours des douze prochains mois, ainsi que l'indication de la source de ce revenu;

- c) tout autre renseignement prescrit par les règlements.

(3) Après avoir déposé un état de divulgation, le membre, et son conjoint si ce dernier est disponible, rencontrent le Commissaire afin de s'assurer que la divulgation a été satisfaisante, et d'obtenir des conseils concernant les obligations du membre en vertu de la présente loi.

Rencontre
avec le
Commissaire

(4) Si un élément d'actif ou du passif ou un intérêt financier décrit à l'état de divulgation concerne une compagnie, le Commissaire vérifie si une autre compagnie est membre du même groupe, au sens des paragraphes 1 (2) à (6) de la *Loi sur les valeurs mobilières*.

Compagnie
du même
groupe

(5) Si le Commissaire détermine qu'il existe un membre du même groupe que la première compagnie, il en avise le membre de l'Assemblée par écrit. Il mentionne également ce fait dans l'état de divulgation publique qu'il prépare conformément à l'article 13.

Idem

13 (1) Après avoir rencontré le membre, et son conjoint si ce dernier est disponible, le Commissaire établit un état de divulgation publique faisant état de tous les renseignements pertinents fournis par le membre, et par le conjoint si ce dernier a rencontré le Commissaire, concernant le membre, son conjoint et ses enfants mineurs, à l'exclusion de ce qui suit :

État de
divulgation
publique

- a) l'actif, le passif et les intérêts financiers dont la valeur est inférieure à 1 000 \$;

- b) la source de revenu, si ce revenu est inférieur à 1 000 \$ au cours d'une période de douze mois;



- c) la valeur de l'actif, du passif et des intérêts financiers du conjoint et des enfants mineurs du membre, ainsi que des compagnies privées au sens de la *Loi sur les valeurs mobilières* dont le conjoint ou un enfant a le contrôle;



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- d) le montant du revenu du conjoint, des enfants mineurs du membre, ou d'une compagnie privée que contrôle le conjoint ou un enfant mineur, si ce

paid from a source other than directly from a ministry or an agency, board or commission of the government;

- (e) the municipal address or legal description of real property that is primarily for the residential or recreational use of the member or the member's spouse or minor children;
- (f) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes;
- (g) the amount of cash on hand or on deposit with a chartered bank, trust company or other financial institution in Ontario that is lawfully entitled to accept deposits;
- (h) the amount of Canada Savings Bonds and other investments or securities of fixed value issued or guaranteed by any level of government in Canada or an agency of such government;
- (i) the value of registered retirement savings plans that are not self-administered;
- (j) the amount invested in open-ended mutual funds;
- (k) the value of guaranteed investment certificates or other similar financial instruments;
- (l) the value of annuities and life insurance policies;
- (m) the value of pension rights; and
- (n) the amount of the following liabilities:
 1. Mortgages and unpaid realty taxes on property referred to in clause (e).
 2. Liabilities related to assets referred to in clauses (f), (h), (i), (j), (k), (l) and (m).
 3. Unpaid income taxes.
 4. Support payments.

revenu provient d'une source autre que directement d'un ministère, d'un organisme, d'un conseil ou d'une commission du gouvernement;


- e) l'adresse municipale ou la description légale d'un bien immeuble utilisé essentiellement à des fins de résidence ou de loisir par le membre, son conjoint ou ses enfants mineurs;
- f) les biens meubles utilisés à des fins de transport, domestiques, éducatives, sociales, décoratives ou de loisirs;
- g) le montant de l'argent en caisse ou en dépôt dans une banque à charte, compagnie de fiducie ou autre institution financière en Ontario légitimement autorisée à accepter des dépôts;
- h) le montant d'obligations d'épargne du Canada et d'autres placements ou valeurs mobilières à valeur fixe, émis ou garantis par un palier de gouvernement au Canada ou l'un de ses organismes;
- i) la valeur des régimes enregistrés d'épargne-retraite qui ne sont pas autogérés;
- j) le montant investi dans des compagnies d'investissement à capital variable;
- k) la valeur des certificats de placement garantis ou d'autres effets financiers semblables;
- l) la valeur de rentes et de polices d'assurance-vie;
- m) la valeur des droits à une pension;
- n) le montant des éléments de passif qui suivent :
 1. Les hypothèques grevant les biens visés à l'alinéa e), et les impôts fonciers impayés sur ces biens.
 2. Les éléments de passif liés aux éléments d'actif visés aux alinéas f), h), i), j), k), l) et m).
 3. Les impôts sur le revenu impayés.
 4. Les aliments.

Exception

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c. 466

(2) The Commissioner may except from the public disclosure statement the source of income received by a member's spouse or minor child, or by a private company as defined in the *Securities Act* controlled by the spouse or child, in respect of services that are customarily provided on a confidential basis.

Idem

(3) The Commissioner may also except from the public disclosure statement the source of income received by a member's spouse or minor child, or by a private company as defined in the *Securities Act* controlled by the spouse or child, if the possibility of serious harm to the spouse's, child's or company's business justifies a departure from the general principle of public disclosure. 

Content

(4) The public disclosure statement shall contain a statement of the nature of the assets referred to in clauses (1) (g) to (m) and the name and location of persons or institutions against whom the assets are held.

Idem

(5) The public disclosure statement shall contain a statement of any gifts or benefits that have been disclosed to the Commissioner under subsection 6 (3).

Filing

(6) The Commissioner shall, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who shall make it available for examination by the public.

Commissioner's
opinions and
advice

14.—(1) A member may, by application in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the obligations of the member under this Act.

Inquiries

(2) The Commissioner may make such inquiries as the Commissioner considers appropriate and provide the member with a written opinion and recommendations.

Confidentiality

(3) The opinion and recommendations of the Commissioner are confidential, but may be released by the member or with the consent of the member in writing.

Commissioner's
opinion on
referred
question

15.—(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) Le Commissaire peut soustraire de l'état de divulgation publique la source du revenu qu'a reçu le conjoint du membre, son enfant mineur ou une compagnie privée au sens de la *Loi sur les valeurs mobilières* dont le conjoint ou l'enfant a le contrôle, en ce qui concerne des services habituellement fournis confidentiellement. Exception
L.R.O. 1980,
chap. 466

(3) Le Commissaire peut également soustraire de l'état de divulgation publique la source du revenu qu'a reçu le conjoint du membre, son enfant mineur ou une compagnie privée au sens de la *Loi sur les valeurs mobilières* dont le conjoint ou l'enfant a le contrôle, si la possibilité de causer un préjudice sérieux aux activités commerciales du conjoint ou de l'enfant ou aux activités de la compagnie justifie une dérogation au principe général de la divulgation publique. Idem

(4) L'état de divulgation publique comporte une déclaration de la nature des éléments d'actif visés aux alinéas (1) g) à m), ainsi que les noms et lieux de personnes ou d'établissements à l'égard desquels l'actif est détenu. Teneur

(5) L'état de divulgation publique comporte une déclaration des dons ou avantages qui ont été divulgués au Commissaire en vertu du paragraphe 6 (3). Idem

(6) Dès que cela est possible, le Commissaire dépose l'état de divulgation publique auprès du greffier de l'Assemblée législative qui le met à la disposition du public pour examen. Dépôt

14 (1) Un membre peut, sur demande écrite, demander que le Commissaire donne un avis et formule des recommandations sur une affaire qui a trait aux obligations du membre en vertu de la présente loi. Avis et
conseils du
Commissaire

(2) Le Commissaire peut faire les enquêtes qu'il estime pertinentes, et fournir au membre, par écrit, son avis et ses recommandations. Enquête

(3) L'avis et les recommandations du Commissaire sont confidentiels. Ils peuvent toutefois être communiqués par le membre ou avec le consentement écrit de celui-ci. Confiden-
tialité

15 (1) Un membre qui a des motifs raisonnables et probables de croire qu'un autre membre enfreint la présente loi peut, sur demande écrite qui énonce les motifs de sa conviction ainsi que la nature de l'infraction prétendue, demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par l'autre membre. Avis du
Commissaire
sur un renvoi

Idem (2) The Legislative Assembly may, by resolution, request that the Commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act.

Idem (3) The Executive Council may request that the Commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of this Act.

Inquiry by Assembly (4) Where a matter has been referred to the Commissioner under subsection (1) or (2), the Legislative Assembly or a committee thereof shall not conduct an inquiry into the matter.

Inquiry **16.**—(1) Upon receiving a request under section 15, and on giving the member concerned reasonable notice, the Commissioner may conduct an inquiry.

Idem (2) Where the request for an opinion is made under subsection 15 (1) or (2), the Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Report to Speaker (3) Where the request for an opinion is made under subsection 15 (1) or (2), the Commissioner shall report his or her opinion to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session.

Report to Lieutenant Governor in Council (4) Where the request for an opinion is made under subsection 15 (3), the Commissioner shall report his or her opinion to the Clerk of the Executive Council.

Penalties **17.**—(1) Where the Commissioner conducts an inquiry under Parts I and II of the *Public Inquiries Act* for the purposes of subsection 15 (1) or (2) and finds that the member has contravened section 3, 4, 6, 7, 8 or 9, or has refused to file a disclosure statement within the time provided by section 12, the Commissioner may recommend in the report that is laid before the Assembly,

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c. 411

- ➡ (a) that the member be reprimanded;
- (b) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) L'Assemblée législative peut, par voie de résolution, demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par un membre. Idem

(3) Le Conseil des ministres peut demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par l'un de ses membres. Idem

(4) Si une affaire a été transmise au Commissaire en vertu du paragraphe (1) ou (2), l'Assemblée législative ou l'un de ses comités n'enquête pas sur cette affaire. Enquête par l'Assemblée

16 (1) Après avoir reçu une demande en vertu de l'article 15 et après avoir donné un avis suffisant au membre visé, le Commissaire peut faire une enquête. Enquête

(2) Si la demande d'avis est faite en vertu du paragraphe 15 (1) ou (2), le Commissaire peut choisir d'exercer les pouvoirs conférés à une commission par les parties I et II de la *Loi sur les enquêtes publiques*, auquel cas, elles s'appliquent à l'enquête de la même façon que s'il s'agissait d'une enquête en vertu de cette loi. Idem
L.R.O. 1980, chap. 411

(3) Si la demande d'avis est faite en vertu du paragraphe 15 (1) ou (2), le Commissaire présente un rapport de son avis au président qui le fait déposer devant l'Assemblée. Si celle-ci ne siège pas, il le dépose à la session suivante. Rapport au président de l'Assemblée

(4) Si la demande d'avis est faite en vertu du paragraphe 15 (3), le Commissaire fait rapport de son avis au greffier du Conseil des ministres. Rapport au lieutenant-gouverneur en conseil

17 (1) Si le Commissaire fait une enquête en vertu des parties I et II de la *Loi sur les enquêtes publiques* aux fins du paragraphe 15 (1) ou (2), et constate que le membre a contrevenu à l'article 3, 4, 6, 7, 8 ou 9, ou a refusé de déposer un état de divulgation dans le délai prévu à l'article 12, il peut recommander, dans le rapport déposé devant l'Assemblée :

- a) que le membre soit réprimandé;
- b) qu'il ait son siège déclaré vacant jusqu'à ce qu'une élection soit tenue dans la circonscription électorale du membre.

Time for
response

↓
(2) The Assembly shall consider the Commissioner's report and respond to it as subsection (3) provides within six months of the day the report is laid before the Assembly. ▲

Order of
Assembly

R.S.O. 1980,
c. 235

(3) The Assembly may order the imposition of the recommendation of the Commissioner under subsection (1) or may reject the recommendation, and sections 45 and 48 of the *Legislative Assembly Act* apply in the same manner as to a contempt of the Assembly, except the power to further inquire into the contravention or to impose a punishment other than the one recommended.

Offence

18.—(1) A former member of the Executive Council shall not, unless twelve months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission);

(b) make representations on his or her own behalf with respect to such a contract or benefit;

(c) make representations on another person's behalf with respect to such a contract or benefit.

Exception

↓
(2) Clauses (1) (a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

Idem

(3) Clauses (1) (a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled. ▲

Penalty

(4) A person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine of not more than \$5,000.

Regulations

19. The Commissioner may, subject to the approval of the Lieutenant Governor in Council, make regulations prescribing any matter that is referred to in this Act as prescribed by the regulations.

➡ (2) Dans les six mois à compter du jour où le rapport du Commissaire est déposé devant l'Assemblée, celle-ci l'étudie et y répond selon ce que prévoit le paragraphe (3). ⬆

Délai

(3) L'Assemblée peut ordonner l'imposition des mesures que recommande le Commissaire en vertu du paragraphe (1) ou rejeter ces recommandations. Les articles 45 et 48 de la *Loi sur l'Assemblée législative* s'appliquent de la même façon que dans le cas d'outrage à l'Assemblée, sauf qu'il n'est pas possible de pousser plus avant l'enquête relative à la contravention, ou d'imposer une sanction autre que celle qui est recommandée.

Ordre de l'Assemblée

L.R.O. 1980, chap. 235

18 (1) À moins que douze mois ne se soient écoulés à compter de la date où il a cessé d'exercer ses fonctions, l'ancien membre du Conseil des ministres ne doit pas :

Infraction

- a) accepter un contrat ni un avantage qui sont accordés ou approuvés par le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission);
- b) faire des observations pour son propre compte concernant un tel contrat ou avantage;
- c) faire des observations pour le compte d'autrui concernant un tel contrat ou avantage.



(2) Les alinéas (1) a) et b) ne s'appliquent pas aux contrats et avantages concernant d'autres devoirs au service de la Couronne.

Exception

(3) Les alinéas (1) a), b) et c) ne s'appliquent pas si les conditions selon lesquelles le contrat ou l'avantage est accordé ou approuvé sont les mêmes pour toutes les personnes y ayant semblablement droit.

Idem

(4) La personne qui contrevient au paragraphe (1) est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

Peine

19 Sous réserve de l'approbation du lieutenant-gouverneur en conseil, le Commissaire peut, par règlement, prescrire une question mentionnée dans la présente loi comme étant prescrite par les règlements.

Règlements

Commence-
ment

20.—(1) This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Filing of
disclosure
statements

(2) Members who are in office when this Act comes into force shall file the disclosure statement required by section 12 within sixty days after this Act comes into force.

Short title

21. The short title of this Act is the *Members' Conflict of Interest Act, 1988*.

20 (1) La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation. Entrée en vigueur

(2) Les membres en fonction lors de l'entrée en vigueur de la présente loi déposent l'état de divulgation requis par l'article 12 dans les soixante jours de l'entrée en vigueur de la présente loi. Dépôt des états de divulgation

21 Le titre abrégé de la présente loi est *Loi de 1988 sur les conflits d'intérêts des membres de l'Assemblée*. Titre abrégé

Bill 1

(Chapter 17
Statutes of Ontario, 1988)

An Act respecting Conflicts of Interest of Members of the Assembly and the Executive Council

The Hon. I. Scott
Attorney General

Projet de loi 1

(Chapitre 17
Loi de l'Ontario de 1988)

Loi concernant les conflits d'intérêts des membres de l'Assemblée et du Conseil des ministres

L'honorable I. Scott
procureur général



<i>1st Reading</i>	November 3rd, 1987
<i>2nd Reading</i>	December 2nd, 1987
<i>3rd Reading</i>	February 9th, 1988
<i>Royal Assent</i>	February 11th, 1988

<i>1^{re} lecture</i>	3 novembre 1987
<i>2^e lecture</i>	2 décembre 1987
<i>3^e lecture</i>	9 février 1988
<i>sanction royale</i>	11 février 1988

Bill 1

1987

An Act respecting Conflicts of Interest of Members of the Assembly and the Executive Council

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions	1. In this Act,
“enfant”	“child” includes a person whom a member has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;
“membre”	“member” means a member of the Legislative Assembly or of the Executive Council, or both;

Projet de loi 1

1987

Loi concernant les conflits d'intérêts
des membres de l'Assemblée
et du Conseil des ministres

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SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 Les définitions qui suivent s'appliquent à la présente loi. Définitions

«conjoint» Conjoint du membre au sens de la partie III de la *Loi de 1986 sur le droit de la famille*, à l'exclusion toutefois de la personne avec qui le membre est marié s'ils ont conclu un accord de séparation ou si leurs obligations alimentaires et leurs biens familiaux ont fait l'objet d'une ordonnance. «spouse» 1986, chap. 4

«enfant» S'entend en outre de la personne dont le membre a manifesté l'intention bien arrêtée de la traiter comme s'il s'agissait d'un enfant de sa famille, sauf si cette personne est placée, contre valeur, dans un foyer d'accueil par celui qui en a la garde légitime. «child»

"intérêt
personnel"

"private interest" does not include an interest in a decision,

- (a) that is of general public application,
- (b) that affects a member as one of a broad class of electors, or
- (c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"conjoint"
1986, c. 4

"spouse" means a person who is the member's spouse within the meaning of Part III of the *Family Law Act, 1986*, but does not include a person to whom the member is married if they have made a separation agreement or if their support obligations and family property have been dealt with by a court order.

Conflict of
interest

2. For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest.

Insider
information

3. A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

4. A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest.

Activities on
behalf of
constituents

5. This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting
extra benefits

6.—(1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Exception

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

Disclosure

(3) Where a gift or personal benefit referred to in subsection (2) exceeds \$200 in value, or where the total value

«intérêt personnel» Ne comprend pas un intérêt dans une décision qui, selon le cas : «private interest»

- a) est d'application publique en général;
- b)- concerne un membre en sa qualité de membre d'une vaste catégorie d'électeurs;
- c) concerne la rémunération et les avantages d'un membre, d'un fonctionnaire ou d'un employé de l'Assemblée législative.

«membre» Membre de l'Assemblée législative ou du Conseil des ministres, ou des deux. «member»

2 Pour l'application de la présente loi, le membre a un conflit d'intérêts lorsqu'il prend une décision ou participe à celle-ci dans l'exécution de ses fonctions et qu'il sait, en prenant cette décision, qu'existe la possibilité de favoriser ses intérêts personnels. Conflit d'intérêts

3 Le membre n'utilise pas les renseignements qu'il obtient dans l'exercice de ses fonctions et qui ne sont pas accessibles au public en général, afin de favoriser ou de chercher à favoriser ses intérêts personnels. Renseignements d'initiés

4 Le membre ne fait pas usage de ses fonctions afin de chercher à influencer une décision prise par une autre personne, dans le dessein de favoriser ses intérêts personnels. Influence

5 La présente loi n'interdit pas les activités qu'exercent normalement les membres pour le compte des électeurs. Activités exercées pour le compte d'électeurs

6 (1) Sauf dans le cas d'une indemnisation qu'autorise la loi, le membre n'accepte pas d'honoraires, de dons ni d'avantages personnels qui sont liés, directement ou indirectement, à l'exercice des devoirs de ses fonctions. Acceptation d'avantages supplémentaires

(2) Le paragraphe (1) ne s'applique pas à un don ou à un avantage personnel qui est reçu dans le cadre du protocole ou d'obligations sociales qui accompagnent habituellement les charges de la fonction. Exception

(3) Si le don ou l'avantage personnel visé au paragraphe (2) a une valeur supérieure à 200 \$, ou si la valeur totale reçue, directement ou indirectement, d'une source au cours d'une période de douze mois est supérieure à 200 \$, le membre dépose immédiatement auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements, qui Divulgation

received directly or indirectly from one source in any twelve-month period exceeds \$200, the member shall immediately file with the Commissioner a disclosure statement, in the form prescribed by the regulations, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

Former
members of
Executive
Council,
benefits and
lobbying

7.—(1) The Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission) shall not knowingly,

- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council, until twelve months have expired after the date when the former member ceased to hold office;
- (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit;
- (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the twelve months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit.

Exception

(2) Clauses (1) (a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

Idem

(3) Clauses (1) (a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

Carrying on
business

8.—(1) A member of the Executive Council shall not,

- (a) engage in employment or in the practice of a profession;
- (b) carry on a business; or
- (c) hold an office or directorship other than in a social club, religious organization or political party,

except as required or permitted by the responsibilities of being a member of the Executive Council.

indique la nature du don ou de l'avantage, sa source et les circonstances dans lesquelles il a été remis et accepté.

7 (1) Le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission) ne doit sciemment :

Avantages offerts à d'anciens membres du Conseil des ministres

- a) accorder ni approuver un contrat en faveur d'un ancien membre du Conseil des ministres, ni lui accorder un avantage, tant que douze mois ne se sont pas écoulés à compter de la date où l'ancien membre a cessé d'exercer ses fonctions;
- b) accorder ni approuver un contrat, ni accorder un avantage en faveur d'un ancien membre du Conseil des ministres qui a fait des observations concernant ce contrat ou cet avantage pendant les douze mois qui suivent la date où l'ancien membre a cessé d'exercer ses fonctions;
- c) accorder ni approuver un contrat, ni accorder un avantage en faveur d'une personne pour le compte de laquelle un ancien membre du Conseil des ministres a fait des observations concernant ce contrat ou cet avantage pendant les douze mois qui suivent la date où l'ancien membre a cessé d'exercer ses fonctions.

(2) Les alinéas (1) a) et b) ne s'appliquent pas aux contrats et avantages concernant d'autres devoirs au service de la Couronne. Exception

(3) Les alinéas (1) a), b) et c) ne s'appliquent pas si les conditions selon lesquelles le contrat ou l'avantage est accordé ou approuvé sont les mêmes pour toutes les personnes y ayant semblablement droit. Idem

8 (1) À l'exclusion de ce qui est requis ou permis dans le cadre de ses responsabilités, le membre du Conseil des ministres ne doit pas : Activités commerciales

- a) exercer de profession ni d'emploi;
- b) exercer d'activités commerciales;
- c) occuper de poste ni ne faire partie d'un conseil d'administration, sauf dans un club social, une organisation religieuse ou un parti politique.

Time for
compliance

(2) A person who becomes a member of the Executive Council shall comply with subsection (1) before the sixty-first day that follows his or her appointment.

Idem

(3) The Commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension such conditions as the Commissioner considers just.

Trusts

(4) If a member of the Executive Council complies with clause (1) (b) by entrusting his or her business to one or more trustees,

- (a) the provisions of the trust shall be approved by the Commissioner;
- (b) the trustees shall be persons who are at arm's length with the member and approved by the Commissioner;
- (c) the trustees shall not consult with the member with respect to managing the trust property; and
- (d) the trustees shall report all material changes in assets, liabilities, and financial interests contained in the trust to the member and the Commissioner, in writing, forthwith after the changes have occurred.

Routine
personal
financial
interests

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on
conflict of
interest

9.—(1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest; and
- (b) withdraw from the meeting without voting or participating in the consideration of the matter.

Idem

(2) A member of the Executive Council who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall request another member of the Executive Council to perform the

(2) La personne qui devient membre du Conseil des ministres se conforme au paragraphe (1) avant le soixante et unième jour qui suit sa nomination. Délai

(3) Le Commissaire peut proroger le délai visé au paragraphe (2) en donnant au membre un avis écrit à cet effet. Il peut assortir la prorogation des conditions qu'il estime justes. Idem

(4) Si un membre du Conseil des ministres se conforme à l'alinéa (1) b) en confiant ses activités commerciales à un ou plusieurs fiduciaires : Fiducies

- a) les dispositions de la fiducie sont approuvées par le Commissaire;
- b) les fiduciaires n'ont pas de lien de dépendance avec le membre et sont approuvés par le Commissaire;
- c) les fiduciaires ne doivent pas s'entretenir avec le membre de la gestion des biens en fiducie;
- d) les fiduciaires font rapport au membre et au Commissaire de tous les changements importants apportés à l'actif, au passif et aux intérêts financiers qui sont déposés en fiducie, par écrit et sans délai après que ces changements ont été faits.

(5) Pour l'application du présent article, la gestion d'intérêts financiers personnels d'ordre courant ne constitue pas des activités commerciales. Intérêts financiers personnels d'ordre courant

9 (1) Le membre qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui est devant l'Assemblée, le Conseil des ministres ou un de leurs comités est tenu, s'il est présent à la réunion où l'affaire est étudiée : Procédure en cas de conflit d'intérêts

- a) de divulguer la nature générale du conflit d'intérêts;
- b) de se retirer de la réunion sans exercer son droit de vote ou sans participer à l'étude de l'affaire.

(2) Le membre du Conseil des ministres qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui requiert sa décision, demande à un autre membre du Conseil d'exercer ses devoirs dans cette affaire en vue de Idem

member's duties in the matter for the purpose of making the decision and the member to whom it is referred may act in the matter for the period of time necessary for the purpose.

COMMISSIONER

- Commissioner **10.**—(1) There shall be a Commissioner who is an officer of the Assembly.
- Appointment (2) The Lieutenant Governor in Council shall appoint a person to the office of Commissioner on the address of the Assembly.
- Term of office (3) The person appointed shall hold office for a term of five years and may be reappointed for a further term or terms.
- Removal (4) The person appointed as Commissioner may be removed before the expiration of the term of office by the Lieutenant Governor in Council for cause on the address of the Assembly.
- Salary (5) The Commissioner shall be paid such remuneration and allowances as are fixed by the Lieutenant Governor in Council.
- Staff (6) The employees and officers that are necessary for the performance of the duties of the Commissioner shall be members of the staff of the Office of the Assembly.
- Annual report **11.** The Commissioner shall report annually upon the affairs of his or her office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

DISCLOSURE

- Disclosure statement **12.**—(1) Every member shall, within sixty days of being elected, and thereafter annually, file with the Commissioner a disclosure statement in the form prescribed by the regulations.
- Contents (2) The disclosure statement shall contain,
- (a) a statement of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private companies as defined in the *Securities Act* controlled by any of them;
 - (b) a statement of any income the member and the member's spouse and minor children, and private companies as defined in the *Securities Act* controlled by any of them, have received in the preced-

prendre la décision. Le membre à qui ces devoirs sont confiés peut les exercer pendant le laps de temps nécessaire à cette fin.

COMMISSAIRE

10 (1) Est créé un poste de Commissaire qui est un fonctionnaire de l'Assemblée. Commissaire

(2) Le lieutenant-gouverneur en conseil nomme une personne au poste de Commissaire sur adresse de l'Assemblée. Nomination

(3) La personne nommée exerce un mandat de cinq ans qui peut être renouvelé. Mandat

(4) Le lieutenant-gouverneur en conseil, sur adresse de l'Assemblée, peut révoquer la personne nommée en qualité de Commissaire avant l'expiration de son mandat, pour un motif valable. Révocation

(5) Le Commissaire reçoit la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil. Traitement

(6) Le personnel nécessaire à l'exécution des fonctions du Commissaire se compose des membres du personnel du bureau de l'Assemblée. Personnel

11 Chaque année, le Commissaire présente un rapport de ses travaux au président de l'Assemblée qui le fait déposer devant l'Assemblée. Rapport annuel

DIVULGATION

12 (1) Chaque membre, dans les soixante jours de son élection, et annuellement par la suite, dépose auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements. État de divulgation

(2) L'état de divulgation comporte : Teneur

- a) un état de l'actif, du passif et des intérêts financiers du membre, de son conjoint et de ses enfants mineurs, ainsi que des compagnies privées au sens de la *Loi sur les valeurs mobilières* dont l'un quelconque d'entre eux a le contrôle;

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- b) un état de tout revenu que le membre, son conjoint, ses enfants mineurs, et les compagnies privées, au sens de la *Loi sur les valeurs mobilières*, dont l'un quelconque d'entre eux a le contrôle, ont reçu au

ing twelve months or are entitled to receive in the next twelve months and the source of the income; and

- (c) any other information that is prescribed by the regulations.

Meeting with
Commissioner

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, shall meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice on the member's obligations under this Act.

Affiliated
corporations

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the Commissioner shall ascertain whether any other corporation is an affiliate of the first-named corporation, as determined under subsections 1 (2) to (6) of the *Securities Act*.

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Idem

(5) If the Commissioner determines that there is an affiliate of the first-named corporation, he or she shall advise the member of the fact, in writing, and shall also mention the fact in the public disclosure statement prepared in accordance with section 13.

Public
disclosure
statement

13.—(1) After meeting with the member, and with the member's spouse if the spouse is available, the Commissioner shall prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the Commissioner, in respect of the member, the spouse and minor children, except,

- (a) assets, liabilities and financial interests having a value of less than \$1,000;
- (b) the source of income where the income paid from the source has a value of less than \$1,000 in any twelve-month period;
- (c) the value of the assets, financial interests and liabilities of the member's spouse and minor children and of private companies as defined in the *Securities Act* controlled by the spouse or by a child;
- (d) the amount of income of the member's spouse or minor children or of a private company controlled by the spouse or a minor child where the income is

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cours des douze mois précédents ou sont en droit de recevoir au cours des douze prochains mois, ainsi que l'indication de la source de ce revenu;

- c) tout autre renseignement prescrit par les règlements.

(3) Après avoir déposé un état de divulgation, le membre, et son conjoint si ce dernier est disponible, rencontrent le Commissaire afin de s'assurer que la divulgation a été satisfaisante, et d'obtenir des conseils concernant les obligations du membre en vertu de la présente loi.

Rencontre
avec le
Commissaire

(4) Si un élément d'actif ou du passif ou un intérêt financier décrit à l'état de divulgation concerne une compagnie, le Commissaire vérifie si une autre compagnie est membre du même groupe, au sens des paragraphes 1 (2) à (6) de la *Loi sur les valeurs mobilières*.

Compagnie
du même
groupe

(5) Si le Commissaire détermine qu'il existe un membre du même groupe que la première compagnie, il en avise le membre de l'Assemblée par écrit. Il mentionne également ce fait dans l'état de divulgation publique qu'il prépare conformément à l'article 13.

Idem

13 (1) Après avoir rencontré le membre, et son conjoint si ce dernier est disponible, le Commissaire établit un état de divulgation publique faisant état de tous les renseignements pertinents fournis par le membre, et par le conjoint si ce dernier a rencontré le Commissaire, concernant le membre, son conjoint et ses enfants mineurs, à l'exclusion de ce qui suit :

État de
divulgation
publique

- a) l'actif, le passif et les intérêts financiers dont la valeur est inférieure à 1 000 \$;
- b) la source de revenu, si ce revenu est inférieur à 1 000 \$ au cours d'une période de douze mois;
- c) la valeur de l'actif, du passif et des intérêts financiers du conjoint et des enfants mineurs du membre, ainsi que des compagnies privées au sens de la *Loi sur les valeurs mobilières* dont le conjoint ou un enfant a le contrôle;
- d) le montant du revenu du conjoint, des enfants mineurs du membre, ou d'une compagnie privée que contrôle le conjoint ou un enfant mineur, si ce

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paid from a source other than directly from a ministry or an agency, board or commission of the government;

- (e) the municipal address or legal description of real property that is primarily for the residential or recreational use of the member or the member's spouse or minor children;
- (f) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes;
- (g) the amount of cash on hand or on deposit with a chartered bank, trust company or other financial institution in Ontario that is lawfully entitled to accept deposits;
- (h) the amount of Canada Savings Bonds and other investments or securities of fixed value issued or guaranteed by any level of government in Canada or an agency of such government;
- (i) the value of registered retirement savings plans that are not self-administered;
- (j) the amount invested in open-ended mutual funds;
- (k) the value of guaranteed investment certificates or other similar financial instruments;
- (l) the value of annuities and life insurance policies;
- (m) the value of pension rights; and
- (n) the amount of the following liabilities:
 - 1. Mortgages and unpaid realty taxes on property referred to in clause (e).
 - 2. Liabilities related to assets referred to in clauses (f), (h), (i), (j), (k), (l) and (m).
 - 3. Unpaid income taxes.
 - 4. Support payments.

revenu provient d'une source autre que directement d'un ministère, d'un organisme, d'un conseil ou d'une commission du gouvernement;

- e) l'adresse municipale ou la description légale d'un bien immeuble utilisé essentiellement à des fins de résidence ou de loisir par le membre, son conjoint ou ses enfants mineurs;
- f) les biens meubles utilisés à des fins de transport, domestiques, éducatives, sociales, décoratives ou de loisirs;
- g) le montant de l'argent en caisse ou en dépôt dans une banque à charte, compagnie de fiducie ou autre institution financière en Ontario légitimement autorisée à accepter des dépôts;
- h) le montant d'obligations d'épargne du Canada et d'autres placements ou valeurs mobilières à valeur fixe, émis ou garantis par un palier de gouvernement au Canada ou l'un de ses organismes;
- i) la valeur des régimes enregistrés d'épargne-retraite qui ne sont pas autogérés;
- j) le montant investi dans des compagnies d'investissement à capital variable;
- k) la valeur des certificats de placement garantis ou d'autres effets financiers semblables;
- l) la valeur de rentes et de polices d'assurance-vie;
- m) la valeur des droits à une pension;
- n) le montant des éléments de passif qui suivent :
 - 1. Les hypothèques grevant les biens visés à l'alinéa e), et les impôts fonciers impayés sur ces biens.
 - 2. Les éléments de passif liés aux éléments d'actif visés aux alinéas f), h), i), j), k), l) et m).
 - 3. Les impôts sur le revenu impayés.
 - 4. Les aliments.

- Exception (2) The Commissioner may except from the public disclosure statement the source of income received by a member's spouse or minor child, or by a private company as defined in the *Securities Act* controlled by the spouse or child, in respect of services that are customarily provided on a confidential basis.
- R.S.O. 1980,
c. 466
- Idem (3) The Commissioner may also except from the public disclosure statement the source of income received by a member's spouse or minor child, or by a private company as defined in the *Securities Act* controlled by the spouse or child, if the possibility of serious harm to the spouse's, child's or company's business justifies a departure from the general principle of public disclosure.
- Content (4) The public disclosure statement shall contain a statement of the nature of the assets referred to in clauses (1) (g) to (m) and the name and location of persons or institutions against whom the assets are held.
- Idem (5) The public disclosure statement shall contain a statement of any gifts or benefits that have been disclosed to the Commissioner under subsection 6 (3).
- Filing (6) The Commissioner shall, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who shall make it available for examination by the public.
- Commissioner's
opinions and
advice **14.**—(1) A member may, by application in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the obligations of the member under this Act.
- Inquiries (2) The Commissioner may make such inquiries as the Commissioner considers appropriate and provide the member with a written opinion and recommendations.
- Confidentiality (3) The opinion and recommendations of the Commissioner are confidential, but may be released by the member or with the consent of the member in writing.
- Commissioner's
opinion on
referred
question **15.**—(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) Le Commissaire peut soustraire de l'état de divulgation publique la source du revenu qu'a reçu le conjoint du membre, son enfant mineur ou une compagnie privée au sens de la *Loi sur les valeurs mobilières* dont le conjoint ou l'enfant a le contrôle, en ce qui concerne des services habituellement fournis confidentiellement.

Exception

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(3) Le Commissaire peut également soustraire de l'état de divulgation publique la source du revenu qu'a reçu le conjoint du membre, son enfant mineur ou une compagnie privée au sens de la *Loi sur les valeurs mobilières* dont le conjoint ou l'enfant a le contrôle, si la possibilité de causer un préjudice sérieux aux activités commerciales du conjoint ou de l'enfant ou aux activités de la compagnie justifie une dérogation au principe général de la divulgation publique.

Idem

(4) L'état de divulgation publique comporte une déclaration de la nature des éléments d'actif visés aux alinéas (1) g) à m), ainsi que les noms et lieux de personnes ou d'établissements à l'égard desquels l'actif est détenu.

Teneur

(5) L'état de divulgation publique comporte une déclaration des dons ou avantages qui ont été divulgués au Commissaire en vertu du paragraphe 6 (3).

Idem

(6) Dès que cela est possible, le Commissaire dépose l'état de divulgation publique auprès du greffier de l'Assemblée législative qui le met à la disposition du public pour examen.

Dépôt

14 (1) Un membre peut, sur demande écrite, demander que le Commissaire donne un avis et formule des recommandations sur une affaire qui a trait aux obligations du membre en vertu de la présente loi.

Avis et
conseils du
Commissaire

(2) Le Commissaire peut faire les enquêtes qu'il estime pertinentes, et fournir au membre, par écrit, son avis et ses recommandations.

Enquête

(3) L'avis et les recommandations du Commissaire sont confidentiels. Ils peuvent toutefois être communiqués par le membre ou avec le consentement écrit de celui-ci.

Confiden-
tialité

15 (1) Un membre qui a des motifs raisonnables et probables de croire qu'un autre membre enfreint la présente loi peut, sur demande écrite qui énonce les motifs de sa conviction ainsi que la nature de l'infraction prétendue, demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par l'autre membre.

Avis du
Commissaire
sur un renvoi

- Idem (2) The Legislative Assembly may, by resolution, request that the Commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act.
- Idem (3) The Executive Council may request that the Commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of this Act.
- Inquiry by Assembly (4) Where a matter has been referred to the Commissioner under subsection (1) or (2), the Legislative Assembly or a committee thereof shall not conduct an inquiry into the matter.
- Inquiry **16.**—(1) Upon receiving a request under section 15, and on giving the member concerned reasonable notice, the Commissioner may conduct an inquiry.
- Idem (2) Where the request for an opinion is made under subsection 15 (1) or (2), the Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act.
- R.S.O. 1980, c. 411
- Report to Speaker (3) Where the request for an opinion is made under subsection 15 (1) or (2), the Commissioner shall report his or her opinion to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session.
- Report to Lieutenant Governor in Council (4) Where the request for an opinion is made under subsection 15 (3), the Commissioner shall report his or her opinion to the Clerk of the Executive Council.
- Penalties **17.**—(1) Where the Commissioner conducts an inquiry under Parts I and II of the *Public Inquiries Act* for the purposes of subsection 15 (1) or (2) and finds that the member has contravened section 3, 4, 6, 7, 8 or 9, or has refused to file a disclosure statement within the time provided by section 12, the Commissioner may recommend in the report that is laid before the Assembly,
- R.S.O. 1980, c. 411
- (a) that the member be reprimanded;
 - (b) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) L'Assemblée législative peut, par voie de résolution, demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par un membre. Idem

(3) Le Conseil des ministres peut demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par l'un de ses membres. Idem

(4) Si une affaire a été transmise au Commissaire en vertu du paragraphe (1) ou (2), l'Assemblée législative ou l'un de ses comités n'enquête pas sur cette affaire. Enquête par l'Assemblée

16 (1) Après avoir reçu une demande en vertu de l'article 15 et après avoir donné un avis suffisant au membre visé, le Commissaire peut faire une enquête. Enquête

(2) Si la demande d'avis est faite en vertu du paragraphe 15 (1) ou (2), le Commissaire peut choisir d'exercer les pouvoirs conférés à une commission par les parties I et II de la *Loi sur les enquêtes publiques*, auquel cas, elles s'appliquent à l'enquête de la même façon que s'il s'agissait d'une enquête en vertu de cette loi. Idem
L.R.O. 1980, chap. 411

(3) Si la demande d'avis est faite en vertu du paragraphe 15 (1) ou (2), le Commissaire présente un rapport de son avis au président qui le fait déposer devant l'Assemblée. Si celle-ci ne siège pas, il le dépose à la session suivante. Rapport au président de l'Assemblée

(4) Si la demande d'avis est faite en vertu du paragraphe 15 (3), le Commissaire fait rapport de son avis au greffier du Conseil des ministres. Rapport au lieutenant-gouverneur en conseil

17 (1) Si le Commissaire fait une enquête en vertu des parties I et II de la *Loi sur les enquêtes publiques* aux fins du paragraphe 15 (1) ou (2), et constate que le membre a contrevenu à l'article 3, 4, 6, 7, 8 ou 9, ou a refusé de déposer un état de divulgation dans le délai prévu à l'article 12, il peut recommander, dans le rapport déposé devant l'Assemblée :

- a) que le membre soit réprimandé;
- b) qu'il ait son siège déclaré vacant jusqu'à ce qu'une élection soit tenue dans la circonscription électorale du membre.

Pénalité
L.R.O. 1980,
chap. 411

Time for
response

(2) The Assembly shall consider the Commissioner's report and respond to it as subsection (3) provides within six months of the day the report is laid before the Assembly.

Order of
Assembly

(3) The Assembly may order the imposition of the recommendation of the Commissioner under subsection (1) or may reject the recommendation, and sections 45 and 48 of the *Legislative Assembly Act* apply in the same manner as to a contempt of the Assembly, except the power to further inquire into the contravention or to impose a punishment other than the one recommended.

R.S.O. 1980,
c. 235

Offence

18.—(1) A former member of the Executive Council shall not, unless twelve months have expired after the date when he or she ceased to hold office,

- (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission);
- (b) make representations on his or her own behalf with respect to such a contract or benefit;
- (c) make representations on another person's behalf with respect to such a contract or benefit.

Exception

(2) Clauses (1) (a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown.

Idem

(3) Clauses (1) (a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

Penalty

(4) A person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine of not more than \$5,000.

Regulations

19. The Commissioner may, subject to the approval of the Lieutenant Governor in Council, make regulations prescribing any matter that is referred to in this Act as prescribed by the regulations.

(2) Dans les six mois à compter du jour où le rapport du Commissaire est déposé devant l'Assemblée, celle-ci l'étudie et y répond selon ce que prévoit le paragraphe (3). Délai

(3) L'Assemblée peut ordonner l'imposition des mesures que recommande le Commissaire en vertu du paragraphe (1) ou rejeter ces recommandations. Les articles 45 et 48 de la *Loi sur l'Assemblée législative* s'appliquent de la même façon que dans le cas d'outrage à l'Assemblée, sauf qu'il n'est pas possible de pousser plus avant l'enquête relative à la contravention, ou d'imposer une sanction autre que celle qui est recommandée. Ordre de l'Assemblée
L.R.O. 1980, chap. 235

18 (1) À moins que douze mois ne se soient écoulés à compter de la date où il a cessé d'exercer ses fonctions, l'ancien membre du Conseil des ministres ne doit pas : Infraction

- a) accepter un contrat ni un avantage qui sont accordés ou approuvés par le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission);
- b) faire des observations pour son propre compte concernant un tel contrat ou avantage;
- c) faire des observations pour le compte d'autrui concernant un tel contrat ou avantage.

(2) Les alinéas (1) a) et b) ne s'appliquent pas aux contrats et avantages concernant d'autres devoirs au service de la Couronne. Exception

(3) Les alinéas (1) a), b) et c) ne s'appliquent pas si les conditions selon lesquelles le contrat ou l'avantage est accordé ou approuvé sont les mêmes pour toutes les personnes y ayant semblablement droit. Idem

(4) La personne qui contrevient au paragraphe (1) est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$. Peine

19 Sous réserve de l'approbation du lieutenant-gouverneur en conseil, le Commissaire peut, par règlement, prescrire une question mentionnée dans la présente loi comme étant prescrite par les règlements. Règlements

Commence-
ment

20.—(1) This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Filing of
disclosure
statements

(2) Members who are in office when this Act comes into force shall file the disclosure statement required by section 12 within sixty days after this Act comes into force.

Short title

21. The short title of this Act is the *Members' Conflict of Interest Act, 1988*.

20 (1) La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation. Entrée en
vigueur

(2) Les membres en fonction lors de l'entrée en vigueur de la présente loi déposent l'état de divulgation requis par l'article 12 dans les soixante jours de l'entrée en vigueur de la présente loi. Dépôt des
états de
divulgation

21 Le titre abrégé de la présente loi est *Loi de 1988 sur les conflits d'intérêts des membres de l'Assemblée*. Titre abrégé

1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 2

An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates

The Hon. R. Nixon
Minister of Financial Institutions

1st Reading November 4th, 1987
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The Bill provides for the establishment of the Ontario Automobile Insurance Board (Part I). The Board will establish and review rates or ranges of rates for the classes of risk exposure for the categories of automobile insurance prescribed by the regulations (sections 19 and 20). Except where an insurer can justify higher or lower rates, an insurer will be required to charge the rate or a rate within the range of rates set by the Board (section 21). All rates charged by insurers must be approved by the Board (sections 21, 22 and 23). Rates related to policies issued under the *Compulsory Automobile Insurance Act* and dividends issued by insurers that are mutual corporations must also be approved (sections 24 and 25).

Bill 2

1987

**An Act to establish the Ontario
Automobile Insurance Board and to provide
for the Review of Automobile Insurance Rates**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“automobile insurance” has the same meaning as in section 1 of the *Insurance Act*, except that it does not include insurance for any motor vehicle or trailer that may be operated legally on a highway without a permit issued under section 7 of the *Highway Traffic Act*;

R.S.O. 1980,
cc. 218, 198

“Board” means the Ontario Automobile Insurance Board established under this Act;

“industry-wide hearing” means a hearing under section 20;

“insurers’ association” means an association of insurers whose purpose it is to advise its members on rates or to maintain statistical information on behalf of its members or on behalf of the Superintendent;

R.S.O. 1980, c. 218, “insurer” means an insurer licensed under the *Insurance Act* and carrying on the business of automobile insurance but does not include an insurer whose licence is limited to contracts of reinsurance;

“Minister” means the Minister of Financial Institutions or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

“prescribed” means prescribed by the regulations;

“rate” means the amount payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes surcharges, fees, discounts and rebates;

“regulations” means the regulations made under this Act;

“Superintendent” means the Superintendent of Insurance.

Facility
Association
R.S.O. 1980,
c. 83

(2) The Facility Association established under the *Compulsory Automobile Insurance Act* shall be deemed to be a person for the purposes of this Act and any proceeding before the Board or a court under this Act may be instituted by or against it in its own name.

PART I

ONTARIO AUTOMOBILE INSURANCE BOARD

Board
established

2. A board to be known as the Ontario Automobile Insurance Board is established.

Composition
of Board

3.—(1) The Board shall be composed of such number of members as the Lieutenant Governor in Council may appoint.

Remuneration
and expenses

(2) The members of the Board who are not Crown employees shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines.

4.—(1) One-half of the members of the Board constitutes a quorum of the Board. Quorum

(2) One-half of the members of a panel of the Board constitutes a quorum of the panel. Idem

5.—(1) The Lieutenant Governor in Council shall appoint a member of the Board to be its chairperson and may appoint one or more other members as vice-chairpersons. Chairperson and vice-chairperson

(2) The chairperson shall assign members of the Board to its various sittings. Chairperson

(3) The vice-chairperson shall perform such duties as may be assigned to him or her under this Act and, if the chairperson is unable to act, the vice-chairperson may act as chairperson. Vice-chairperson

(4) If there is more than one vice-chairperson, the chairperson may designate one of them to act in the absence of the chairperson. Idem

(5) The chairperson may designate one or more members of the Board to sit as a panel and may direct the panel to conduct any hearing or to authorize any inquiry, investigation or other proceeding that the Board itself could conduct or authorize. Panels

(6) Despite subsection (5), the chairperson shall not appoint less than three members of the Board to a panel that conducts an industry-wide hearing. Idem

6.—(1) If a member of the Board for any reason ceases to be a member, he or she may, with the consent of the chairperson, in connection with any matter in which the member participated as a member of the Board, carry out and complete any duties and responsibilities and exercise any powers that he or she would have had had he or she not ceased to be a member of the Board. Completion of matters by members who resign or retire, etc.

(2) Despite subsection 4 (2), if a member of the Board for any reason is unable to carry out and complete his or her duties, the Board and every panel of which he or she was a member may carry out and complete any duties and responsibilities and exercise any powers that it would have had had the member been able to carry out and complete his or her duties. Completion of matters where member not able to continue

7.—(1) Such employees as are required for the purposes of the Board may be appointed under the *Public Service Act*. Staff
R.S.O. 1980,
c. 418

Professional
assistance

(2) The Board may engage persons other than those appointed under subsection (1) to provide professional, technical or other assistance to the Board and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Immunity

8.—(1) No action or other proceeding for compensation or damages shall be instituted against the Board, its members or employees or persons appointed under subsection 7 (2) for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations or for any neglect or default in the performance or exercise in good faith of such duty or power.

Crown
liability
R.S.O. 1980,
c. 393

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

Testimony in
civil
proceedings

(3) Except with the consent of the Board, no member or employee of the Board and no person appointed under subsection 7 (2) shall be required to testify in any civil proceeding, in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of his or her duties or while acting within the scope of his or her employment under this Act.

Annual
report

9.—(1) The Board shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Board.

Further
reports

(2) The Board shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Tabling of
reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Assembly if it is in session or, if not, at the next session.

Moneys

10.—(1) All expenses incurred and expenditures made by the Board in the conduct of its affairs shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

Assessment
of insurers

(2) The Lieutenant Governor in Council may assess all insurers with respect to any of the amounts appropriated

under subsection (1) and not otherwise recovered and an insurer shall pay the amount assessed against it.

(3) Where an assessment is made under subsection (2), the share of a particular insurer shall be in the same proportion as the total gross premiums written by the insurer in Ontario for automobile insurance in its last preceding fiscal year bears to the total of all gross premiums written by all insurers in Ontario for automobile insurance in the last preceding fiscal year of each. Idem

11.—(1) The Board shall adopt the most expeditious method of determining the questions on the merits arising in any proceeding. Expeditious
procedures

(2) The Board shall give adequate public notice of its hearings to the public. Notice of
proceeding

(3) The Board shall give notice of an industry-wide hearing to every insurer. Idem

(4) The Board shall give notice of its hearings to the Superintendent. Idem

(5) The parties to a proceeding before the Board are, Parties

(a) in the case of an industry-wide hearing,

(i) every insurer that gives the Board notice of its desire to participate in the hearing as a party, and

(ii) such other persons as the Board may name as parties; and

(b) in any other case,

(i) the applicant, and

(ii) such other persons as the Board may name as parties.

(6) Where two or more parties have a common interest in respect of an application to the Board, the parties may authorize one or more of those parties to represent all of them and any order made by the Board may be made applicable to all. Common
interest

(7) The Superintendent, as a party or otherwise, is entitled at any time, by counsel or otherwise, to take part in proceeding. Representa-
tion of
Superin-
tendent

ings before the Board or to take part in appeals from any order of the Board whether or not the Superintendent appeared at any hearing or portion of a hearing.

Powers and
duties of
Board

12.—(1) The Board may exercise such powers and shall perform such duties as are necessary to carry out its functions under this Act and without restricting the generality of the foregoing, it may,

- (a) make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;
- (b) determine, with respect to any particular hearing, what constitutes adequate public notice;
- (c) before or during a hearing, conduct any inquiry or inspection it considers necessary;
- (d) if, in its opinion, additional information is required by the Board, order an insurer or insurers' association or the Facility Association to provide the information in the possession of the insurer, insurers' association or Facility Association, as the case may be;
- (e) authorize any person, herein referred to as an inspector, to enter any place where an insurer or insurers' association or the Facility Association carries on business or keeps documents or things relating directly or indirectly to automobile insurance and to examine documents and things of the insurer, insurers' association or Facility Association, as the case may be, and make such inquiries as may be relevant;
- (f) require an insurer or insurers' association or the Facility Association, to provide print-outs of any documents or other information stored by electronic means unless the insurer, insurers' association or Facility Association, as the case may be, is able to provide to the Board a copy of the document or information in some other form that is acceptable to the Board; and
- (g) in determining any matter, consider any relevant information obtained by it in addition to evidence given at a hearing, if it first informs the persons taking part in the proceedings of the additional inform-

ation and gives them an opportunity to explain or refute it.

(2) Every insurer, every insurers' association and the Facility Association and their respective directors, officers and employees shall give all reasonable assistance to an inspector and shall answer all proper questions relating to the inquiry. Assistance

(3) An inspector for the purposes of carrying out his or her duties, Powers of inspector

- (a) may enter any place described in clause (1) (e);
- (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the examination or inquiry;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and
- (d) may question a person on matters that are or may be relevant to the carrying out of the examination or inquiry subject to the person's right to have counsel or some other representative present during the questioning.

(4) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section. Entry to dwellings

(5) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed. Warrant for search

(6) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out an examination or inquiry under this Act, the justice of the Warrant for entry

peace may issue a warrant in the prescribed form authorizing such entry by the person named in the warrant.

Execution
and expiry of
warrant

(7) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(8) No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise impede an inspector in carrying out an inquiry.

Idem

(9) Subsection (8) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (5).

Admissibility
of copies

(10) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Idem

(11) No document or thing or copy thereof or extract therefrom in the possession of an inspector shall be introduced in evidence in any proceeding before the Board unless the owner of the document or thing is first given notice of the intent to introduce it into evidence.

Orders

13.—(1) The Board shall determine matters before it by order.

Terms

(2) The Board may make an order subject to such conditions as are set out in the order.

Conditions
precedent

(3) Without restricting the generality of subsection (2), the Board may provide in an order that the order does not come into effect until the performance, to the satisfaction of the Board or of a person named by it for the purpose, of any conditions that the Board may impose.

Interim
orders

(4) The Board may make interim orders pending the final decision of the matter before it.

Making of
order

(5) An order of the Board shall be deemed to be sufficiently made if it is signed by a member or by an employee of

the Board designated by the Board to sign orders on its behalf.

(6) The Board shall provide the Superintendent with a copy of every order made by it forthwith after making the order. Copies of orders

(7) The Board shall provide each insurer with a copy of every order that results from an industry-wide hearing forthwith after making the order. Idem

14.—(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and, subject to section 18, its action or decision thereon is final and conclusive for all purposes. Exclusive jurisdiction

(2) The Board may at any time, if it considers it advisable to do so, reconsider any order or decision made by it and confirm, vary or revoke the order or decision and in reconsidering any order or decision, it may restrict the reconsideration to such issues as it considers appropriate. Reconsideration of decisions, etc.

15. Upon payment of the prescribed fee, if any, any person, during the normal office hours of the Board, may, Access to information

- (a) examine material filed with the Board for the purpose of a hearing;
- (b) examine rates filed with the Board by an insurer;
- (c) examine a copy of any decision, order or reasons made or given by the Board; and
- (d) obtain copies of any such material, rates, decision, order or reasons.

16.—(1) The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be assessed. Costs

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(3) The Board may establish a scale under which such costs shall be assessed. Idem

(4) Costs awarded under this section may include the costs of the Board, regard being had to the time and expenses of the Board. Idem

Stated case

17.—(1) The Board may, at the request of the Minister, or of its own motion, or upon the application of any party, and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that, in the opinion of the Board, is a question of law.

Idem

(2) The Divisional Court shall hear and determine the stated case and remit it to the Board with the opinion of the Court thereon.

Appeal to
Divisional
Court

18.—(1) An appeal lies to the Divisional Court from any order of the Board upon a question of law or jurisdiction, but no such appeal lies unless leave to appeal is obtained from the Court within thirty clear days of the making of the order sought to be appealed from or within such further time as the Court under the special circumstances of the case allows.

Board and
Superin-
tendent may
be heard

(2) The Board and the Superintendent are entitled to be heard by counsel or otherwise upon the argument of any such appeal.

Board to act

(3) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with such opinion, but in no case shall such order be retroactive in its effect.

Not liable for
costs

(4) The Board is not liable for costs in connection with any appeal or application for leave to appeal under this section.

No stay

(5) An order of the Board takes effect at the time set out in the order, and its operation is not suspended by an appeal unless the Court otherwise orders.

PART II

RATE AND DIVIDEND REVIEW

Classes of
risk exposure

19. The Lieutenant Governor in Council may prescribe the classes of risk exposures that may be considered in determining the premiums for coverages for different categories of automobile insurance and the procedures to be followed in assigning insureds and vehicles to any such class of risk exposure.

Premium
rates to be
set by Board

20.—(1) Upon classes of risk exposure being prescribed for a category of automobile insurance, the Board, following an industry-wide hearing, shall set a rate or range of rates with respect to each such class of risk exposure.

(2) The Board may hold industry-wide hearings to review any rates or range of rates set by it and following such a hearing may vary any such rate or range of rates. Review

(3) A rate or range of rates set by the Board may be expressed in dollar terms or in such other manner as the Board considers appropriate so that a person may determine the rate or range of rates for each class of risk exposure. Expression of rates

(4) In setting a rate or range of rates, the Board shall set a rate or range of rates that in the opinion of the Board is just and reasonable and not excessive or inadequate. Fair rates

(5) An industry-wide hearing shall be on the motion of the Board or on request of the Minister. Hearing

(6) The Board in its discretion may consider at any one hearing the rate or range of rates for such class or classes of risk exposure for such category or categories of automobile insurance as it considers appropriate. Idem

(7) In determining rates or ranges of rates, the Board may consider any financial or other matter directly or indirectly affecting rates. Scope

(8) The Board may, for the purposes of an industry-wide hearing, publish proposed rates or ranges of rates prepared by such person or persons as may be designated by the Board for any class or classes of risk exposures for any category or categories of automobile insurance and the Board shall make copies thereof available to the public without charge. Publication of proposals

(9) The Board shall establish a procedure to give notice to the public of proposed rates or ranges of rates and to receive written submissions from the public in lieu of or in addition to any participation in a hearing. Response of public

(10) Before the commencement of an industry-wide hearing, the Board, after giving the parties an opportunity to be heard, may identify the issues that in its opinion are to be determined at the industry-wide hearing. Pre-hearing

(11) A rate or range of rates set by the Board takes effect 120 days after the Board makes its order setting the rate or range of rates unless the Board otherwise orders. Effective date

(12) Despite subsection (11), an insurer may, by notice in writing to the Board, decide that the rate or range of rates set by the Board takes effect with respect to it on such day that is Idem

at least sixty days and less than 120 days after the Board's order as may be set out in the notice.

Prohibition

21.—(1) Unless otherwise permitted under this Act, no insurer shall,

- (a) determine rates for any category of automobile insurance except on the basis of the prescribed classes of risk exposure for that category; or
- (b) charge any rate other than,
 - (i) a rate that has been approved by the Board under section 22 or 23 in relation to that insurer, or
 - (ii) a rate that may be charged under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act* where the contract has been submitted to the insurer under that Act.

R.S.O. 1980,
c. 83

Revocation
of approved
rates

(2) Where the Board under subsection 20 (2) varies any rate or range of rates for a class of risk exposure, all approvals of rates previously given under sections 22 and 23 for that class of risk exposure shall be deemed to be revoked on the day the new rate or range of rates takes effect.

Application

(3) Subsection (1) does not apply to an insurer with respect to a particular category of automobile insurance until the rates or ranges of rates with respect to the prescribed classes of risk exposure for that category have been set by the Board and have taken effect.

Prohibition,
transitional

(4) Where an insurer writes contracts of automobile insurance that are not within a category of automobile insurance for which the rates or ranges of rates have been set under section 20, the insurer shall not charge any rate in respect of a coverage under such a contract that exceeds,

- (a) the capped rate for the coverage where no order has been made under this section; or
- (b) the rate set out in an order made under this section where such an order has been made.

Rates, transi-
tional

(5) An insurer may apply to the Board for an order to increase any of its capped rates in respect of coverages referred to in subsection (4) and the Board may approve the increase if the insurer demonstrates that,

- (a) the circumstances of the insurer justify the increase; and
- (b) the resulting rate is just and reasonable and not excessive.

(6) The Board, in lieu of approving an increase of a capped rate, may reject or vary the rates proposed by the applicant having regard to the criteria set out in clauses (5) (a) and (b) and, if it is of the opinion that a capped rate that is the subject of the application is excessive, it may reduce the capped rate. Idem

(7) Where permitted by the regulations, an insurer may increase its capped rates by an amount that does not exceed the prescribed percentage. Increase of capped rates

(8) Where an insurer was not providing a coverage on the 23rd day of April, 1987 but subsequently provides the coverage, the capped rate for the coverage is, New insurers and coverages

- (a) with respect to a coverage described in clause (a) of the definition of "capped rate" in subsection (9), the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date; and
- (b) with respect to a coverage described in clause (b) or (c) of the said definition, 90 per cent of the premium described in clause (a) of this subsection.

(9) In this section,

Definitions

"capped rate" means,

- (a) in the case of any coverage under a contract of automobile insurance, other than a coverage provided through the Facility Association or a coverage to which clause (b) or (c) applies, the lesser of,
 - (i) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the rules, procedures and factors used by the insurer on that date, and
 - (ii) the premium that would have been charged for the coverage for comparable risks for a

term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date,

(b) in the case of a premium for any coverage determined in whole or in part on the basis that an insured under the contract is a male under the age of twenty-five years,

(i) 90 per cent of the premium described in subclause (a) (i) if the insured is insured through the Facility Association,

(ii) 90 per cent of the lesser of the premiums described in subclauses (a) (i) and (ii) if the insured is not insured through the Facility Association,

(c) in the case of a premium for any coverage determined in whole or in part on the basis that an automobile insured under the contract is a taxi, the lesser of,

(i) the premium described in subclause (a) (i), and

(ii) 90 per cent of the premium described in subclause (a) (ii);

R.S.O. 1980,
c. 83 “Facility Association rate” means the premium for a coverage determined under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act*;

R.S.O. 1980,
c. 218 “insured” means an insured as defined in section 201 of the *Insurance Act*.

Idem

(10) A reference in this section to “capped rate” shall be deemed to include a reference to a capped rate as determined by the Board under subsections (5) and (6) and to a capped rate as increased under subsection (7).

Approval of
rates

22.—(1) An insurer that intends to charge the rate set under section 20 or a rate within the range of rates set under that section for a class of risk exposure shall apply to the Board for approval of the rate it intends to charge.

Timing

(2) An application shall be made under subsection (1),

- (a) within thirty days of an order being made under section 20 setting a rate or range of rates;
- (b) before varying any rate previously approved by the Board, where the rate, when varied, will be within the range of rates set out under section 20; and
- (c) before entering any contract of automobile insurance with respect to which a rate or range of rates has been set under section 20, where the insurer was not writing contracts that covered that class of risk exposure at the time the rate or range of rates was set.

(3) An application under subsection (1) shall be accompanied by the statutory declaration of an officer of the insurer declaring that the proposed rate is the same as the rate set by the Board or is within the range of rates set by the Board, as the case may be.

Statutory
declaration

(4) On the application of the insurer made not less than three days that are not a Saturday or holiday before the expiry of the thirty-day period referred to in clause (2) (a), the Board may extend the period for a period not exceeding thirty days.

Extension of
time

(5) Where an application is received under subsection (4), the Board shall be deemed to have approved the application unless it holds a hearing in respect of the application before the expiry of the thirty-day period referred to in clause (2) (a).

Idem

(6) The Board shall accept applications received by it under subsection (1) after the expiry of a limitation period prescribed by this section but such acceptance does not relieve an insurer from prosecution under this Act.

Late filing

(7) An application under subsection (1) shall be deemed to have been approved by the Board twenty days after its filing unless the Board within that twenty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that the rate is not the same as the rate set by the Board under section 20 or within the range of rates set under that section.

Approval

(8) Where the Board advises an applicant orally that it has not approved an application under subsection (1), it shall forthwith mail a written notice to the insurer confirming that fact.

Idem

- Hearing (9) Where the Board notifies an insurer that it has not approved an application under subsection (1), it shall hold a hearing.
- Idem (10) Although an application may be deemed to have been approved under subsection (7), if the Board is subsequently of the opinion that the rate is not the same as the rate set under section 20 or within the range of rates set under that section, the Board shall hold a hearing into the matter.
- Powers of Board (11) Following a hearing under subsection (9) or (10), the Board may approve the application or it may vary the rate to the rate set under section 20 or to a rate within the range of rates set under that section and the rate as so varied shall be deemed to be a rate approved under this section.
- Public notice may be waived (12) The Board may waive public notice with respect to a hearing under this section.
- Rates outside range **23.**—(1) Where an insurer wishes to charge a rate for a class of risk exposure other than a rate to which section 22 applies, the insurer shall apply to the Board for approval of the rate.
- Power of Board (2) Where an application is made under this section, the Board may approve, reject or vary the proposed rate.
- Fair rates (3) Where an insurer applies for the approval of any rate under this section, the insurer must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate and that the circumstances of the insurer justify the use of the proposed rate.
- Rates pending decision (4) Despite subsection 21 (2), where an application is made under this section, the insurer, until the Board makes its decision with respect to the application, may continue to charge the rate for the class of risk exposure to which the application relates that it was charging immediately before the application was filed with the Board or it may charge a lower rate.
- Idem (5) Where the rate approved by the Board under this section is less than the rate charged by the insurer, as permitted by subsection (4), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, it shall provide for the reimbursement of policy holders for any excess of premiums.

24.—(1) The Facility Association shall apply to the Board for approval of rates prepared by it under section 10 of the *Compulsory Automobile Insurance Act*.

Facility
Association
rates
R.S.O. 1980,
c. 83

(2) The Board, following a hearing, may approve the rates set out in an application under subsection (1) or it may vary any such rates.

Powers of
Board

(3) Where the Facility Association applies for the approval of rates under this section, it must demonstrate that the proposed rates are just and reasonable and not excessive or inadequate.

Fair rates

25.—(1) No insurer that is a mutual corporation shall issue a dividend unless the dividend has been approved by the Board.

Mutual
corporation
dividends

(2) Where an application is made under this section, the Board may approve, reject or vary the proposed dividend.

Power of
Board

(3) Where an insurer applies for the approval of a dividend under this section, the insurer must demonstrate that the proposed dividend is just and reasonable and not excessive and that the circumstances of the insurer justify the proposed dividend.

Matters to be
considered

(4) The Board may dispense with a hearing with respect to an application under this section.

Hearing not
required

PART III

ENFORCEMENT, REGULATIONS AND MISCELLANEOUS

26.—(1) Every person who contravenes or fails to comply with this Act, the regulations or an order of the Board is guilty of an offence and on conviction is liable to a fine of not more than \$25,000, in the case of an individual, and not more than \$100,000, in any other case.

Offences and
penalties

(2) If a corporation or the Facility Association contravenes or fails to comply with this Act, the regulations or an order of the Board, every officer or director thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or Facility Association, as the case may be, has been prosecuted or convicted.

Parties

(3) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

Consent

Limitation
period

(4) No proceeding for an offence under this Act shall be commenced in any court more than two years after the facts upon which the proceedings are based first came to the knowledge of the Board.

Policy
statements

27.—(1) The Superintendent, with the approval of the Lieutenant Governor in Council, may issue policy statements on matters related to automobile insurance rates and dividends.

When
effective

(2) A policy statement takes effect on the day it is published in *The Ontario Gazette*.

Effect of
statements

(3) In making orders under this Act, the Board shall have regard to the policy statements issued under this section.

References

28. The Lieutenant Governor in Council may require the Board to examine and report on any question related to automobile insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

Regulations

29.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;
- (b) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;
- (c) prescribing the manner of gathering statistics and other information in relation to automobile insurance;
- (d) prescribing information to be filed with the Board by insurers and insurers' associations and the Facility Association, the time or times at which the information is to be filed and requiring that the accuracy of the information be certified by an actuary or an accountant as may be appropriate;
- (e) prescribing fees payable with respect to proceedings before the Board and with respect to the fees referred to in section 15;
- (f) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations;

- (g) permitting insurers to increase their capped rates as defined in subsection 21 (9) by such percentage as is set out in the regulations;
- (h) prescribing forms including affidavits and statutory declarations and providing for their use.

(2) A regulation made under clause (1) (g) may be made retroactive to the 1st day of January, 1988. Idem

30. The *Regulations Act* does not apply to rules made under clause 12 (1) (a) or to the orders of the Board. Non-application of R.S.O. 1980, c. 446

31. In the event of conflict between this Act and any other Act, except the *Human Rights Code, 1981*, this Act prevails. Conflict with other Acts 1981, c. 53

32.—(1) Subsections 10 (3) to (13) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

(3) The Association shall prepare and promulgate rates in respect of contracts provided under the Plan using the classes of risk exposure, categories of automobile insurance and procedures prescribed under the *Ontario Automobile Insurance Board Act, 1987*. Rates 1987, c...

(4) Rates prepared under subsection (3) do not come into effect until approved by the Ontario Automobile Insurance Board. Idem

(2) Clause 15 (d) of the said Act is repealed.

33. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

34. The short title of this Act is the *Ontario Automobile Insurance Board Act, 1987*. Short title

Bill 2

An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates

The Hon. R. Nixon
Minister of Financial Institutions

1st Reading November 4th, 1987
2nd Reading December 8th, 1987
3rd Reading
Royal Assent

(Reprinted as amended by the Administration of Justice Committee)

EXPLANATORY NOTE

The Bill provides for the establishment of the Ontario Automobile Insurance Board (Part I). The Board will establish and review rates or ranges of rates for the classes of risk exposure for the categories of automobile insurance prescribed by the regulations (sections 19 and 20). Except where an insurer can justify higher or lower rates, an insurer will be required to charge the rate or a rate within the range of rates set by the Board (section 21). All rates charged by insurers must be approved by the Board (sections 21, 22 and 23). Rates related to policies issued under the *Compulsory Automobile Insurance Act* and dividends issued by insurers must also be approved (sections 24 and 25).

Bill 2

1987

**An Act to establish the Ontario
Automobile Insurance Board and to provide
for the Review of Automobile Insurance Rates**

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1.—(1) In this Act,

Definitions

“automobile insurance” has the same meaning as in section 1
of the *Insurance Act*, except that it does not include insur-
ance for any motor vehicle or trailer that may be operated

R.S.O. 1980,
c. 218

R.S.O. 1980,
c. 198

legally on a highway without a permit issued under section 7 of the *Highway Traffic Act* other than a motorized snow vehicle;

“Board” means the Ontario Automobile Insurance Board established under this Act;

“industry-wide hearing” means an industry-wide hearing required or permitted by Part II;

“insurers’ association” means an association of insurers whose purpose it is to advise its members on rates or to maintain statistical information on behalf of its members or on behalf of the Superintendent;

R.S.O. 1980,
c. 218

“insurer” means an insurer licensed under the *Insurance Act* and carrying on the business of automobile insurance but does not include an insurer whose licence is limited to contracts of reinsurance;

“Minister” means the Minister of Financial Institutions or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

“prescribed” means prescribed by the regulations;

“rate” means the amount payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts and rebates;

“regulations” means the regulations made under this Act;

“Superintendent” means the Superintendent of Insurance.

Facility
Association
R.S.O. 1980,
c. 83

(2) The Facility Association established under the *Compulsory Automobile Insurance Act* shall be deemed to be a person for the purposes of this Act and any proceeding before the Board or a court under this Act may be instituted by or against it in its own name.

PART I

ONTARIO AUTOMOBILE INSURANCE BOARD

Board
established

2. A board to be known as the Ontario Automobile Insurance Board is established.

3.—(1) The Board shall be composed of such number of members as the Lieutenant Governor in Council may appoint.

Composition
of Board

↓
(2) The members of the Board shall be representative of insureds, the insurance industry and the public. ↑

Idem

(3) The members of the Board who are not Crown employees shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines.

Remuneration
and expenses

4.—(1) One-half of the members of the Board constitutes a quorum of the Board.

Quorum

(2) One-half of the members of a panel of the Board constitutes a quorum of the panel.

Idem

5.—(1) The Lieutenant Governor in Council shall appoint a member of the Board to be its chairperson and may appoint one or more other members as vice-chairpersons.

Chairperson
and vice-
chairperson

(2) The chairperson shall assign members of the Board to its various sittings.

Chairperson

(3) The vice-chairperson shall perform such duties as may be assigned to him or her under this Act and, if the chairperson is unable to act, the vice-chairperson may act as chairperson.

Vice-
chairperson

(4) If there is more than one vice-chairperson, the chairperson may designate one of them to act in the absence of the chairperson.

Idem

(5) The chairperson may designate one or more members of the Board to sit as a panel and may direct the panel to conduct any hearing or to authorize any inquiry, investigation or other proceeding that the Board itself could conduct or authorize.

Panels

(6) Despite subsection (5), the chairperson shall not appoint less than three members of the Board to a panel that conducts an industry-wide hearing.

Idem

6.—(1) If a member of the Board for any reason ceases to be a member, he or she may, with the consent of the chairperson, in connection with any matter in which the member participated as a member of the Board, carry out and complete any duties and responsibilities and exercise any powers that he or she would have had had he or she not ceased to be a member of the Board.

Completion
of matters by
members
who resign
or retire, etc.

Completion
of matters
where
member not
able to
continue

(2) Despite subsection 4 (2), if a member of the Board for any reason is unable to carry out and complete his or her duties, the Board and every panel of which he or she was a member may carry out and complete any duties and responsibilities and exercise any powers that it would have had had the member been able to carry out and complete his or her duties.

Staff

R.S.O. 1980,
c. 418

7.—(1) Such employees as are required for the purposes of the Board may be appointed under the *Public Service Act*.

Professional
assistance

(2) The Board may engage persons other than those appointed under subsection (1) to provide professional, technical or other assistance to the Board and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Immunity

8.—(1) No action or other proceeding for compensation or damages shall be instituted against the Board, its members or employees or persons appointed under subsection 7 (2) for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations or for any neglect or default in the performance or exercise in good faith of such duty or power.

Crown
liability
R.S.O. 1980,
c. 393

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

Testimony in
civil
proceedings

(3) Except with the consent of the Board, no member or employee of the Board and no person appointed under subsection 7 (2) shall be required to testify in any civil proceeding, in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of his or her duties or while acting within the scope of his or her employment under this Act.

Annual
report

9.—(1) The Board shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Board.

Further
reports

(2) The Board shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Assembly if it is in session or, if not, at the next session. Tabling of reports

10.—(1) All expenses incurred and expenditures made by the Board in the conduct of its affairs shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature. Moneys

(2) The Lieutenant Governor in Council may assess all insurers with respect to any of the amounts appropriated under subsection (1) and not otherwise recovered and an insurer shall pay the amount assessed against it. Assessment of insurers

(3) Where an assessment is made under subsection (2), the share of a particular insurer shall be in the same proportion as the total gross premiums written by the insurer in Ontario for automobile insurance in its last preceding fiscal year bears to the total of all gross premiums written by all insurers in Ontario for automobile insurance in the last preceding fiscal year of each. Idem

11.—(1) The Board shall adopt the most expeditious method of determining the questions on the merits arising in any proceeding. Expeditious procedures

(2) The Board shall give adequate public notice of its hearings to the public. Notice of proceeding

(3) The Board shall give notice of an industry-wide hearing to every insurer. Idem


(4) The Board shall give notice of its hearings to the Superintendent. Idem

▼
(5) The parties to proceedings before the Board are, Parties

(a) in the case of a review under section 24, the Facility Association and such other persons as give the Board written notice of their intention to participate as parties; and

(b) in any other case, the applicant, if any, and such other persons as give the Board written notice of their intention to participate as parties.

(6) Where an unincorporated association gives written notice of its intention to participate as a party to a proceeding before the Board, it shall thereafter be deemed to be a person Unincorporated association to be deemed a person

for the purposes of the proceeding and it may be a party in its own name. 

Common
interest

(7) Where two or more parties have a common interest in respect of an application to the Board, the parties may authorize one or more of those parties to represent all of them and any order made by the Board may be made applicable to all.

Representa-
tion of
Superin-
tendent

(8) The Superintendent, as a party or otherwise, is entitled at any time, by counsel or otherwise, to take part in proceedings before the Board or to take part in appeals from any order of the Board whether or not the Superintendent appeared at any hearing or portion of a hearing.

Powers and
duties of
Board

12.—(1) The Board may exercise such powers and shall perform such duties as are necessary to carry out its functions under this Act and without restricting the generality of the foregoing, it may,

- (a) make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;
- (b) determine, with respect to any particular hearing, what constitutes adequate public notice;
- (c) before or during a hearing, conduct any inquiry or inspection it considers necessary;
- (d) if, in its opinion, additional information is required by the Board, order an insurer or insurers' association or the Facility Association to provide the information in the possession of the insurer, insurers' association or Facility Association, as the case may be;
- (e) authorize any person, herein referred to as an inspector, to enter any place where an insurer or insurers' association or the Facility Association carries on business or keeps documents or things relating directly or indirectly to automobile insurance and to examine documents and things of the insurer, insurers' association or Facility Association, as the case may be, and make such inquiries as may be relevant;
- (f) require an insurer or insurers' association or the Facility Association, to provide print-outs of any documents or other information stored by electronic

means unless the insurer, insurers' association or Facility Association, as the case may be, is able to provide to the Board a copy of the document or information in some other form that is acceptable to the Board; and

- (g) in determining any matter, consider any relevant information obtained by it in addition to evidence given at a hearing, if it first informs the persons taking part in the proceedings of the additional information and gives them an opportunity to explain or refute it.

(2) Every insurer, every insurers' association and the Facility Association and their respective directors, officers and employees shall give all reasonable assistance to an inspector and shall answer all proper questions relating to the inquiry.

Assistance

(3) An inspector for the purposes of carrying out his or her duties,

Powers of
inspector

- (a) may enter any place described in clause (1) (e);
- (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the examination or inquiry;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and
- (d) may question a person on matters that are or may be relevant to the carrying out of the examination or inquiry subject to the person's right to have counsel or some other representative present during the questioning.

(4) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Entry to
dwellings

(5) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the person named in the warrant

Warrant for
search

to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for
entry

(6) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the person named in the warrant.

Execution
and expiry of
warrant

(7) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(8) No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise impede an inspector in carrying out an inquiry.

Idem

(9) Subsection (8) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (5).

Admissibility
of copies

(10) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Idem

(11) No document or thing or copy thereof or extract therefrom in the possession of an inspector shall be introduced in evidence in any proceeding before the Board unless the owner of the document or thing is first given notice of the intent to introduce it into evidence.

Orders

13.—(1) The Board shall determine matters before it by order.

Terms

(2) The Board may make an order subject to such conditions as are set out in the order.

Conditions
precedent

(3) Without restricting the generality of subsection (2), the Board may provide in an order that the order does not come

into effect until the performance, to the satisfaction of the Board or of a person named by it for the purpose, of any conditions that the Board may impose.



(4) The Board may make interim orders pending the final decision of a matter before it, but no interim order shall be made that leads to an increase in a premium under a contract of automobile insurance unless the hearing on the matter has commenced.

Interim
orders

(5) Where, under subsection (4), the Board makes an interim order that leads to an increase in a premium under a contract of automobile insurance, and the final order of the Board leads to a decrease in the premium payable under the interim order, an insurer shall refund to its policyholder the amount of any premium overpayment retroactive to the day that the increase took effect under the interim order.

Insurers to
reimburse
policyholders

(6) An order of the Board shall be deemed to be sufficiently made if it is signed by a member or by an employee of the Board designated by the Board to sign orders on its behalf.

Making of
order

(7) The Board shall provide the Superintendent with a copy of every order made by it forthwith after making the order.

Copies of
orders

(8) The Board shall provide each insurer with a copy of every order that results from an industry-wide hearing forthwith after making the order.

Idem

14.—(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and, subject to section 18, its action or decision thereon is final and conclusive for all purposes.

Exclusive
jurisdiction

(2) The Board may at any time, if it considers it advisable to do so, reconsider any order or decision made by it and confirm, vary or revoke the order or decision and in reconsidering any order or decision, it may restrict the reconsideration to such issues as it considers appropriate.

Reconsideration of
decisions,
etc.

15. Upon payment of the prescribed fee, if any, any person, during the normal office hours of the Board, may,

Access to
information

- (a) examine material filed with the Board for the purpose of a hearing;
- (b) examine rates filed with the Board by an insurer;

- (c) examine a copy of any decision, order or reasons made or given by the Board; and
- (d) obtain copies of any such material, rates, decision, order or reasons.

Costs **16.**—(1) The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be assessed.

Idem (2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed.

Idem (3) The Board may establish a scale under which such costs shall be assessed.

Idem (4) Costs awarded under this section may include the costs of the Board, regard being had to the time and expenses of the Board.

Stated case **17.**—(1) The Board may, at the request of the Minister, or of its own motion, or upon the application of any party, and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that, in the opinion of the Board, is a question of law.

Idem (2) The Divisional Court shall hear and determine the stated case and remit it to the Board with the opinion of the Court thereon.

Appeal to
Divisional
Court **18.**—(1) An appeal lies to the Divisional Court from any order of the Board upon a question of law or jurisdiction, but no such appeal lies unless leave to appeal is obtained from the Court within thirty clear days of the making of the order sought to be appealed from or within such further time as the Court under the special circumstances of the case allows.

Board and
Superin-
tendent may
be heard (2) The Board and the Superintendent are entitled to be heard by counsel or otherwise upon the argument of any such appeal.

Board to act (3) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with such opinion, but in no case shall such order be retroactive in its effect.

Not liable for
costs (4) The Board is not liable for costs in connection with any appeal or application for leave to appeal under this section.

(5) An order of the Board takes effect at the time set out in the order, and its operation is not suspended by an appeal unless the Court otherwise orders. No stay

PART II

RATE AND DIVIDEND REVIEW

19.—(1) The Lieutenant Governor in Council may prescribe the classes of risk exposures that may be considered in determining the premiums for coverages for different categories of automobile insurance and the procedures to be followed in assigning insureds and vehicles to any such class of risk exposure. Classes of risk exposure

(2) Subsection (1) is amended on a day to be named by proclamation of the Lieutenant Governor by striking out “Lieutenant Governor in Council” in the first line and inserting in lieu thereof “Board, by order, following an industry-wide hearing”. Amendment

20.—(1) Upon classes of risk exposure being prescribed for a category of automobile insurance, the Board, following an industry-wide hearing, shall set a rate or range of rates with respect to each such class of risk exposure. Premium rates to be set by Board

(2) The Board may hold industry-wide hearings to review any rates or range of rates set by it and following such a hearing may vary any such rate or range of rates. Review

(3) A rate or range of rates set by the Board may be expressed in dollar terms or in such other manner as the Board considers appropriate so that a person may determine the rate or range of rates for each class of risk exposure. Expression of rates

(4) In setting a rate or range of rates, the Board shall set a rate or range of rates that in the opinion of the Board is just and reasonable and not excessive or inadequate. Fair rates

(5) An industry-wide hearing shall be on the motion of the Board or on request of the Minister. Hearing

(6) The Board in its discretion may consider at any one hearing the rate or range of rates for such class or classes of risk exposure for such category or categories of automobile insurance as it considers appropriate. Idem

(7) In determining rates or ranges of rates, the Board may consider any financial or other matter directly or indirectly affecting rates. Scope

Publication
of proposals

(8) The Board may, for the purposes of an industry-wide hearing, publish proposed rates or ranges of rates prepared by such person or persons as may be designated by the Board for any class or classes of risk exposures for any category or categories of automobile insurance and the Board shall make copies thereof available to the public without charge.

Response of
public

(9) The Board shall establish a procedure to give notice to the public of proposed rates or ranges of rates and to receive written submissions from the public in lieu of or in addition to any participation in a hearing.

Pre-hearing

(10) Before the commencement of an industry-wide hearing, the Board, after giving the parties an opportunity to be heard, may identify the issues that in its opinion are to be determined at the industry-wide hearing.

Effective
date

(11) A rate or range of rates set by the Board takes effect 120 days after the Board makes its order setting the rate or range of rates unless the Board otherwise orders.

Idem

(12) Despite subsection (11), an insurer may, by notice in writing to the Board, decide that the rate or range of rates set by the Board takes effect with respect to it on such day that is at least sixty days and less than 120 days after the Board's order as may be set out in the notice.



Revocation
of approved
rates

(13) If the Board under subsection (2) establishes a new rate or range of rates, all approvals of rates previously given under sections 22, 23 and 24 for that class of risk exposure shall be deemed to be revoked on the day the new rate or ranges of rates takes effect.

Amendment

(14) Subsection (2) is repealed on a day to be named by proclamation of the Lieutenant Governor and the following substituted therefor:

Review

(1a) The Board may hold industry-wide hearings for the purpose of reviewing either or both the classes of risk exposure for different categories of automobile insurance and the rates or ranges of rates set by it.

Variation of
rates

(2) Following an industry-wide hearing at which a rate or range of rates set by it is considered, the Board may vary the rate or range of rates and where classes of risk exposure are considered, it may vary the classes.

and on that day the following subsection is added to this section:

(5a) Any person may apply to the Board for changes in the classes of risk exposure, and where the Board, in its absolute discretion, is of the opinion that it would be in the public interest to consider the proposed changes, the Board shall hold an industry-wide hearing to review the proposed changes in the classes of risk exposure and the rates or ranges of rates with respect to the changes in the classes of risk exposure. Idem

(15) An industry-wide hearing commenced before the date named in the proclamation under subsection (14) shall be completed and the Board may make orders following the hearing as if this section had not been amended by that subsection. Transitional

21.—(1) Unless otherwise permitted under this Act, no insurer shall, Prohibition

(a) determine rates for any category of automobile insurance except on the basis of the prescribed classes of risk exposure for that category; or

(b) charge any rate other than,

(i) a rate that has been approved by the Board under section 22 or 23 in relation to that insurer, or

(ii) a rate that may be charged under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act* where the contract has been submitted to the insurer under that Act. R.S.O. 1980,
c. 83

(2) Subsection (1) does not apply to an insurer with respect to a particular category of automobile insurance until the rates or ranges of rates with respect to the prescribed classes of risk exposure for that category have been set by the Board and have taken effect. Application

(3) Where an insurer writes contracts of automobile insurance that are not within a category of automobile insurance for which the rates or ranges of rates have been set under section 20, the insurer shall not charge any rate in respect of a coverage under such a contract that exceeds, Prohibition,
transitional

(a) the capped rate for the coverage where no order has been made under this section; or

(b) the rate set out in an order made under this section where such an order has been made.

Rates, transi-
tional

(4) An insurer may apply to the Board for an order to increase any of its capped rates in respect of coverages referred to in subsection (3) and the Board may approve the increase if the insurer demonstrates that,

- (a) the circumstances of the insurer justify the increase; and
- (b) the resulting rate is just and reasonable and not excessive.

Idem

(5) The Board, in lieu of approving an increase of a capped rate, may reject or vary the rates proposed by the applicant having regard to the criteria set out in clauses (4) (a) and (b) and, if it is of the opinion that a capped rate that is the subject of the application is excessive, it may reduce the capped rate.

Increase of
capped rates

(6) Where permitted by the regulations, an insurer may increase its capped rates by an amount that does not exceed the prescribed percentage.

New insurers
and
coverages

(7) Where an insurer was not providing a coverage on the 23rd day of April, 1987 but subsequently provides the coverage, the capped rate for the coverage is,

- (a) with respect to a coverage described in clause (a) of the definition of "capped rate" in subsection (8), the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date; and
- (b) with respect to a coverage described in clause (b) or (c) of the said definition, 90 per cent of the premium described in clause (a) of this subsection.

Definitions

(8) In this section,

"capped rate" means,

- (a) in the case of any coverage under a contract of automobile insurance, other than a coverage provided through the Facility Association or a coverage to which clause (b) or (c) applies, the lesser of,
 - (i) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using

the rules, procedures and factors used by the insurer on that date, and

- (ii) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date,
- (b) in the case of a premium for any coverage determined in whole or in part on the basis that an insured under the contract is a male under the age of twenty-five years,
 - (i) 90 per cent of the premium described in subclause (a) (ii) if the insured is insured through the Facility Association,
 - (ii) 90 per cent of the lesser of the premiums described in subclauses (a) (i) and (ii) if the insured is not insured through the Facility Association,
- (c) in the case of a premium for any coverage determined in whole or in part on the basis that an automobile insured under the contract is a taxi, the lesser of,
 - (i) the premium described in subclause (a) (i), and
 - (ii) 90 per cent of the premium described in subclause (a) (ii);

“Facility Association rate” means the premium for a coverage determined under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act*;

R.S.O. 1980,
c. 83

“insured” means an insured as defined in section 201 of the *Insurance Act*.

R.S.O. 1980,
c. 218

(9) A reference in this section to “capped rate” shall be deemed to include a reference to a capped rate as determined by the Board under subsections (4) and (5) and to a capped rate as increased under subsection (6).

Idem

22.—(1) An insurer that intends to charge the rate set under section 20 or a rate within the range of rates set under

Approval of
rates

that section for a class of risk exposure shall apply to the Board for approval of the rate it intends to charge.

Timing

(2) An application shall be made under subsection (1),

- (a) within thirty days of an order being made under section 20 setting a rate or range of rates;
- (b) before varying any rate previously approved by the Board, where the rate, when varied, will be within the range of rates set out under section 20; and
- (c) before entering any contract of automobile insurance with respect to which a rate or range of rates has been set under section 20, where the insurer was not writing contracts that covered that class of risk exposure at the time the rate or range of rates was set.

Statutory declaration

(3) An application under subsection (1) shall be accompanied by the statutory declaration of an officer of the insurer declaring that the proposed rate is the same as the rate set by the Board or is within the range of rates set by the Board, as the case may be.

Extension of time

(4) On the application of the insurer made not less than three days that are not a Saturday or holiday before the expiry of the thirty-day period referred to in clause (2) (a), the Board may extend the period for a period not exceeding thirty days.

Idem

(5) Where an application is received under subsection (4), the Board shall be deemed to have approved the application unless it holds a hearing in respect of the application before the expiry of the thirty-day period referred to in clause (2) (a).

Late filing

(6) The Board shall accept applications received by it under subsection (1) after the expiry of a limitation period prescribed by this section but such acceptance does not relieve an insurer from prosecution under this Act.

Approval

(7) An application under subsection (1) shall be deemed to have been approved by the Board twenty days after its filing unless the Board within that twenty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that the rate is not the same as the rate set by the Board under section 20 or within the range of rates set under that section.

(8) Where the Board advises an applicant orally that it has not approved an application under subsection (1), it shall forthwith mail a written notice to the insurer confirming that fact. Idem

(9) Where the Board notifies an insurer that it has not approved an application under subsection (1), it shall hold a hearing. Hearing

(10) Although an application may be deemed to have been approved under subsection (7), if the Board is subsequently of the opinion that the rate is not the same as the rate set under section 20 or within the range of rates set under that section, the Board shall hold a hearing into the matter. Idem

(11) Following a hearing under subsection (9) or (10), the Board may approve the application or it may vary the rate to the rate set under section 20 or to a rate within the range of rates set under that section and the rate as so varied shall be deemed to be a rate approved under this section. Powers of Board

(12) The Board may waive public notice with respect to a hearing under this section. Public notice may be waived

23.—(1) Where an insurer wishes to charge a rate for a class of risk exposure other than a rate to which section 22 applies, the insurer shall apply to the Board for approval of the rate. Rates outside range

➡
(2) Except as provided in subsections (3) and (5), the Board shall hold a hearing with respect to applications under subsection (1). Hearing required

(3) Where all of the rates included in an application under subsection (1) are below the rates or ranges of rates set under section 20, the application shall be deemed to have been approved by the Board thirty days after its filing, unless the Board within that thirty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that, Exception

(a) it is in the public interest to hold a hearing on the application; or

(b) the Board does not have sufficient information upon which to make a decision concerning the application.

(4) Where the Board advises an applicant orally that it has not approved an application referred to in subsection (3), it Idem

shall forthwith mail a written notice to the insurer confirming that fact.


Filing of
additional
information

(5) Where the Board advises an applicant that it has not approved an application referred to in subsection (3) because of insufficient information, the Board in its discretion may permit the insurer to file additional information within a specified period and it may extend the thirty-day period accordingly.

Powers of
the Board

(6) Following a hearing required by this section, the Board may approve the application or it may reject or vary the proposed rate and the rate so varied shall be deemed to be a rate approved under this section.

Public notice
may be
waived

(7) The Board may waive public notice with respect to a hearing under this section. 


Fair rates

(8) Where an insurer applies for the approval of any rate under this section, the insurer must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate and that the circumstances of the insurer justify the use of the proposed rate.

Rates
pending
decision

(9) Despite subsection 20 (13), where an application is made under this section, the insurer, until the Board makes its decision with respect to the application, may continue to charge the rate for the class of risk exposure to which the application relates that it was charging immediately before the application was filed with the Board or it may charge a lower rate.

Idem

(10) Where the rate approved by the Board under this section is less than the rate charged by the insurer, as permitted by subsection (9), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, the insurer shall reimburse its policyholders for any excess of premiums. 

Facility
Association
rates

24.—(1) Subject to subsection (12) but despite any other provision of this Act or the regulations, the Facility Association shall not promulgate any rate in respect of contracts of automobile insurance provided under the Plan of Operation under the *Compulsory Automobile Insurance Act* that has not been set or approved by the Board under this section.

R.S.O. 1980,
c. 83

Idem

(2) The Facility Association shall apply to the Board for approval of rates prepared by it under section 10 of the *Compulsory Automobile Insurance Act*.

(3) The Board of its own motion may, and at the request of the Minister shall, review rates in respect of contracts of automobile insurance provided under the Plan of Operation under the *Compulsory Automobile Insurance Act* and, following a hearing, may set rates that it considers to be just and reasonable and not excessive or inadequate in respect of such contracts. Idem
R.S.O. 1980,
c. 83

(4) Where a rate or range of rates is set under section 20 for a class of risk exposure, all rates in respect of that class promulgated by the Facility Association before the coming into force of this section or set under subsection (3) shall be deemed to be revoked on the day the rate or range of rates takes effect. Revocation
of rates

(5) Where a rate will be revoked under subsection (4) or an approval will be revoked under subsection 20 (13), the Facility Association, within thirty days of an order being made under section 20 setting a rate or range of rates, shall prepare and apply to the Board for approval to promulgate a rate that, Approval of
rates

(a) is the rate set under section 20 or is a rate within the range of rates set under that section; or

(b) is not a rate to which clause (a) applies.

(6) The Facility Association may at any time apply to the Board for the variation of any rate previously promulgated by it. Idem

(7) Subsections 22 (3) to (12) apply with necessary modifications to the approval of a rate to which clause (5) (a) applies. Procedures
and powers
of Board

(8) Where an application is made under this section and subsections 22 (3) to (12) do not apply to the application, Idem

(a) the Facility Association must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate;

(b) the Board may approve, reject or vary the proposed rate.

(9) Despite subsection 20 (13), if the Facility Association makes an application under clause (5) (b) or applies to vary a rate approved in an application under clause (5) (a) so that the rate will no longer be the rate set under section 20 or within the range of rates set under that section, the rates for the class of risk exposure to which the application relates that Rates
pending
decision

were in effect under the Plan of Operation immediately before the application continue in effect until the Board makes its decision.

Idem

(10) Where the Facility Association makes an application described in subsection (8) and the Board approves a rate that is less than the rate continued in effect under subsection (9), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, an insurer shall reimburse its policyholders for any excess of premiums.


Promulgation

(11) The Facility Association shall promulgate rates set or approved under this section forthwith after they are approved or set.

Existing rates
R.S.O. 1980,
c. 83

(12) Subject to subsection (4), rates promulgated by the Facility Association under section 10 of the *Compulsory Automobile Insurance Act* before the coming into force of the section continue in force until they are varied in accordance with this section.

Dividends

25.—(1) No insurer shall issue a dividend in respect of a contract of automobile insurance unless the dividend has been approved by the Board. 

Power of
Board

(2) Where an application is made under this section, the Board may approve, reject or vary the proposed dividend.

Matters to be
considered

(3) Where an insurer applies for the approval of a dividend under this section, the insurer must demonstrate that the proposed dividend is just and reasonable and not excessive and that the circumstances of the insurer justify the proposed dividend.

Hearing not
required

(4) The Board may dispense with a hearing with respect to an application under this section.

PART III

ENFORCEMENT, REGULATIONS AND MISCELLANEOUS

Offences and
penalties

26.—(1) Every person who contravenes or fails to comply with this Act, the regulations or an order of the Board is guilty of an offence and on conviction is liable to a fine of not more than \$25,000, in the case of an individual, and not more than \$100,000, in any other case.

(2) If a corporation or the Facility Association contravenes or fails to comply with this Act, the regulations or an order of the Board, every officer or director thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or Facility Association, as the case may be, has been prosecuted or convicted. Parties

(3) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board. Consent

(4) No proceeding for an offence under this Act shall be commenced in any court more than two years after the facts upon which the proceedings are based first came to the knowledge of the Board. Limitation period

27.—(1) The Superintendent, with the approval of the Lieutenant Governor in Council, may issue policy statements on matters related to categories of automobile insurance, classes of risk exposure and automobile insurance rates and dividends. Policy statements


(2) A policy statement takes effect on the day it is published in *The Ontario Gazette*. When effective

(3) In making orders under this Act, the Board shall have regard to the policy statements issued under this section. Effect of statements

28. The Lieutenant Governor in Council may require the Board to examine and report on any question related to automobile insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing. References

29.—(1) The Lieutenant Governor in Council may make regulations, Regulations

(a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;

(b) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which Part II applies; 

(c) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;

- (d) prescribing the manner of gathering statistics and other information in relation to automobile insurance;
- (e) prescribing information to be filed with the Board by insurers and insurers' associations and the Facility Association, the time or times at which the information is to be filed and requiring that the accuracy of the information be certified by an actuary or an accountant as may be appropriate;
- (f) prescribing fees payable with respect to proceedings before the Board and with respect to the fees referred to in section 15;
- (g) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations;
- (h) permitting insurers to increase their capped rates as defined in subsection 21 (8) by such percentage as is set out in the regulations;
- (i) prescribing forms including affidavits and statutory declarations and providing for their use;
- (j) authorizing the Board, following a hearing by the Board, to approve risk management programs for one or more policyholders within such class or classes of policyholders as may be named in the regulations.

Idem

(2) A regulation made under clause (1) (h) may be made retroactive to the 1st day of January, 1988.

Amendments

(3) On a day to be named by proclamation of the Lieutenant Governor,


- (a) subsection (1) is amended by striking out clauses (a), (b), (c), (g) and (h); and
- (b) subsection (2) is repealed and the following substituted therefor:

Idem

(1a) The Board, by order, may make regulations,

- (a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;

- (b) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;
- (c) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which Part II applies;
- (d) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations.

(2) Regulations made under clauses (1) (a), (b), (c) and (g), and section 19, as they read before the coming into force of this subsection, continue in force until remade or revoked by the Board. 

Transitional

30.—(1) The *Regulations Act* does not apply to rules made under clause 12 (1) (a) or to orders of the Board.

Non-application of R.S.O. 1980, c. 446

(2) A regulation made by the Board under section 19 or 29 does not come into force until it is published in *The Ontario Gazette* or until such date following the publication as is set out in the regulation.

Publication required


(3) Subsection (2) comes into force on the day named in the proclamation under subsection 29(3). 

Commencement

31. In the event of conflict between this Act and any other Act, except the *Human Rights Code, 1981*, this Act prevails.

Conflict with other Acts 1981, c. 53

32.—(1) Subsections 10 (3) to (13) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

(3) The Association may prepare rates in respect of contracts provided under the Plan. 

Rates


(4) Rates prepared under subsection (3) do not come into effect until approved by the Ontario Automobile Insurance Board.

Idem

(2) Clause 15 (d) of the said Act is repealed.

33.—(1) No insurer shall differentiate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status, family status or handicap.

Prohibition against discrimination

Commencement (2) Subsection (1) comes into force on the day named in the proclamation under subsection 29(3). 

Commence-
ment **34.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title **35.** The short title of this Act is the *Ontario Automobile Insurance Board Act, 1988*.

Bill 2

(Chapter 18
Statutes of Ontario, 1988)

An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates

The Hon. R. Nixon
Minister of Financial Institutions



<i>1st Reading</i>	November 4th, 1987
<i>2nd Reading</i>	December 8th, 1987
<i>3rd Reading</i>	February 11th, 1988
<i>Royal Assent</i>	February 11th, 1988

Bill 2

1987

**An Act to establish the Ontario
Automobile Insurance Board and to provide
for the Review of Automobile Insurance Rates**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“automobile insurance” has the same meaning as in section 1 of the *Insurance Act*, except that it does not include insurance for any motor vehicle or trailer that may be operated

R.S.O. 1980,
c. 218

R.S.O. 1980,
c. 198

legally on a highway without a permit issued under section 7 of the *Highway Traffic Act* other than a motorized snow vehicle;

“Board” means the Ontario Automobile Insurance Board established under this Act;

“industry-wide hearing” means an industry-wide hearing required or permitted by Part II;

“insurers’ association” means an association of insurers whose purpose it is to advise its members on rates or to maintain statistical information on behalf of its members or on behalf of the Superintendent;

R.S.O. 1980,
c. 218

“insurer” means an insurer licensed under the *Insurance Act* and carrying on the business of automobile insurance but does not include an insurer whose licence is limited to contracts of reinsurance;

“Minister” means the Minister of Financial Institutions or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

“prescribed” means prescribed by the regulations;

“rate” means the amount payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts and rebates;

“regulations” means the regulations made under this Act;

“Superintendent” means the Superintendent of Insurance.

Facility
Association
R.S.O. 1980,
c. 83

(2) The Facility Association established under the *Compulsory Automobile Insurance Act* shall be deemed to be a person for the purposes of this Act and any proceeding before the Board or a court under this Act may be instituted by or against it in its own name.

PART I

ONTARIO AUTOMOBILE INSURANCE BOARD

Board
established

2. A board to be known as the Ontario Automobile Insurance Board is established.

3.—(1) The Board shall be composed of such number of members as the Lieutenant Governor in Council may appoint. Composition of Board

(2) The members of the Board shall be representative of insureds, the insurance industry and the public. Idem

(3) The members of the Board who are not Crown employees shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines. Remuneration and expenses

4.—(1) One-half of the members of the Board constitutes a quorum of the Board. Quorum

(2) One-half of the members of a panel of the Board constitutes a quorum of the panel. Idem

5.—(1) The Lieutenant Governor in Council shall appoint a member of the Board to be its chairperson and may appoint one or more other members as vice-chairpersons. Chairperson and vice-chairperson

(2) The chairperson shall assign members of the Board to its various sittings. Chairperson

(3) The vice-chairperson shall perform such duties as may be assigned to him or her under this Act and, if the chairperson is unable to act, the vice-chairperson may act as chairperson. Vice-chairperson

(4) If there is more than one vice-chairperson, the chairperson may designate one of them to act in the absence of the chairperson. Idem

(5) The chairperson may designate one or more members of the Board to sit as a panel and may direct the panel to conduct any hearing or to authorize any inquiry, investigation or other proceeding that the Board itself could conduct or authorize. Panels

(6) Despite subsection (5), the chairperson shall not appoint less than three members of the Board to a panel that conducts an industry-wide hearing. Idem

6.—(1) If a member of the Board for any reason ceases to be a member, he or she may, with the consent of the chairperson, in connection with any matter in which the member participated as a member of the Board, carry out and complete any duties and responsibilities and exercise any powers that he or she would have had had he or she not ceased to be a member of the Board. Completion of matters by members who resign or retire, etc.

Completion
of matters
where
member not
able to
continue

(2) Despite subsection 4 (2), if a member of the Board for any reason is unable to carry out and complete his or her duties, the Board and every panel of which he or she was a member may carry out and complete any duties and responsibilities and exercise any powers that it would have had had the member been able to carry out and complete his or her duties.

Staff

R.S.O. 1980,
c. 418

7.—(1) Such employees as are required for the purposes of the Board may be appointed under the *Public Service Act*.

Professional
assistance

(2) The Board may engage persons other than those appointed under subsection (1) to provide professional, technical or other assistance to the Board and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Immunity

8.—(1) No action or other proceeding for compensation or damages shall be instituted against the Board, its members or employees or persons appointed under subsection 7 (2) for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations or for any neglect or default in the performance or exercise in good faith of such duty or power.

Crown
liability
R.S.O. 1980,
c. 393

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

Testimony in
civil
proceedings

(3) Except with the consent of the Board, no member or employee of the Board and no person appointed under subsection 7 (2) shall be required to testify in any civil proceeding, in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of his or her duties or while acting within the scope of his or her employment under this Act.

Annual
report

9.—(1) The Board shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Board.

Further
reports

(2) The Board shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Assembly if it is in session or, if not, at the next session.

Tabling of reports

10.—(1) All expenses incurred and expenditures made by the Board in the conduct of its affairs shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

Moneys

(2) The Lieutenant Governor in Council may assess all insurers with respect to any of the amounts appropriated under subsection (1) and not otherwise recovered and an insurer shall pay the amount assessed against it.

Assessment of insurers

(3) Where an assessment is made under subsection (2), the share of a particular insurer shall be in the same proportion as the total gross premiums written by the insurer in Ontario for automobile insurance in its last preceding fiscal year bears to the total of all gross premiums written by all insurers in Ontario for automobile insurance in the last preceding fiscal year of each.

Idem

11.—(1) The Board shall adopt the most expeditious method of determining the questions on the merits arising in any proceeding.

Expeditious procedures

(2) The Board shall give adequate public notice of its hearings to the public.

Notice of proceeding

(3) The Board shall give notice of an industry-wide hearing to every insurer.

Idem

(4) The Board shall give notice of its hearings to the Superintendent.

Idem

(5) The parties to proceedings before the Board are,

Parties

(a) in the case of a review under section 24, the Facility Association and such other persons as give the Board written notice of their intention to participate as parties; and

(b) in any other case, the applicant, if any, and such other persons as give the Board written notice of their intention to participate as parties.

(6) Where an unincorporated association gives written notice of its intention to participate as a party to a proceeding before the Board, it shall thereafter be deemed to be a person

Unincorporated association to be deemed a person

for the purposes of the proceeding and it may be a party in its own name.

Common
interest

(7) Where two or more parties have a common interest in respect of an application to the Board, the parties may authorize one or more of those parties to represent all of them and any order made by the Board may be made applicable to all.

Representa-
tion of
Superin-
tendent

(8) The Superintendent, as a party or otherwise, is entitled at any time, by counsel or otherwise, to take part in proceedings before the Board or to take part in appeals from any order of the Board whether or not the Superintendent appeared at any hearing or portion of a hearing.

Powers and
duties of
Board

12.—(1) The Board may exercise such powers and shall perform such duties as are necessary to carry out its functions under this Act and without restricting the generality of the foregoing, it may,

- (a) make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;
- (b) determine, with respect to any particular hearing, what constitutes adequate public notice;
- (c) before or during a hearing, conduct any inquiry or inspection it considers necessary;
- (d) if, in its opinion, additional information is required by the Board, order an insurer or insurers' association or the Facility Association to provide the information in the possession of the insurer, insurers' association or Facility Association, as the case may be;
- (e) authorize any person, herein referred to as an inspector, to enter any place where an insurer or insurers' association or the Facility Association carries on business or keeps documents or things relating directly or indirectly to automobile insurance and to examine documents and things of the insurer, insurers' association or Facility Association, as the case may be, and make such inquiries as may be relevant;
- (f) require an insurer or insurers' association or the Facility Association, to provide print-outs of any documents or other information stored by electronic

means unless the insurer, insurers' association or Facility Association, as the case may be, is able to provide to the Board a copy of the document or information in some other form that is acceptable to the Board; and

- (g) in determining any matter, consider any relevant information obtained by it in addition to evidence given at a hearing, if it first informs the persons taking part in the proceedings of the additional information and gives them an opportunity to explain or refute it.

(2) Every insurer, every insurers' association and the Facility Association and their respective directors, officers and employees shall give all reasonable assistance to an inspector and shall answer all proper questions relating to the inquiry. Assistance

(3) An inspector for the purposes of carrying out his or her duties, Powers of inspector

- (a) may enter any place described in clause (1) (e);
- (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the examination or inquiry;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and
- (d) may question a person on matters that are or may be relevant to the carrying out of the examination or inquiry subject to the person's right to have counsel or some other representative present during the questioning.

(4) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section. Entry to dwellings

(5) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the person named in the warrant Warrant for search

to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(6) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the person named in the warrant.

Execution and expiry of warrant

(7) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(8) No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise impede an inspector in carrying out an inquiry.

Idem

(9) Subsection (8) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (5).

Admissibility of copies

(10) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Idem

(11) No document or thing or copy thereof or extract therefrom in the possession of an inspector shall be introduced in evidence in any proceeding before the Board unless the owner of the document or thing is first given notice of the intent to introduce it into evidence.

Orders

13.—(1) The Board shall determine matters before it by order.

Terms

(2) The Board may make an order subject to such conditions as are set out in the order.

Conditions precedent

(3) Without restricting the generality of subsection (2), the Board may provide in an order that the order does not come

into effect until the performance, to the satisfaction of the Board or of a person named by it for the purpose, of any conditions that the Board may impose.

(4) The Board may make interim orders pending the final decision of a matter before it, but no interim order shall be made that leads to an increase in a premium under a contract of automobile insurance unless the hearing on the matter has commenced.

Interim
orders

(5) Where, under subsection (4), the Board makes an interim order that leads to an increase in a premium under a contract of automobile insurance, and the final order of the Board leads to a decrease in the premium payable under the interim order, an insurer shall refund to its policyholder the amount of any premium overpayment retroactive to the day that the increase took effect under the interim order.

Insurers to
reimburse
policyholders

(6) An order of the Board shall be deemed to be sufficiently made if it is signed by a member or by an employee of the Board designated by the Board to sign orders on its behalf.

Making of
order

(7) The Board shall provide the Superintendent with a copy of every order made by it forthwith after making the order.

Copies of
orders

(8) The Board shall provide each insurer with a copy of every order that results from an industry-wide hearing forthwith after making the order.

Idem

14.—(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and, subject to section 18, its action or decision thereon is final and conclusive for all purposes.

Exclusive
jurisdiction

(2) The Board may at any time, if it considers it advisable to do so, reconsider any order or decision made by it and confirm, vary or revoke the order or decision and in reconsidering any order or decision, it may restrict the reconsideration to such issues as it considers appropriate.

Reconsideration of
decisions,
etc.

15. Upon payment of the prescribed fee, if any, any person, during the normal office hours of the Board, may,

Access to
information

- (a) examine material filed with the Board for the purpose of a hearing;
- (b) examine rates filed with the Board by an insurer;

(c) examine a copy of any decision, order or reasons made or given by the Board; and

(d) obtain copies of any such material, rates, decision, order or reasons.

Costs

16.—(1) The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be assessed.

Idem

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed.

Idem

(3) The Board may establish a scale under which such costs shall be assessed.

Idem

(4) Costs awarded under this section may include the costs of the Board, regard being had to the time and expenses of the Board.

Stated case

17.—(1) The Board may, at the request of the Minister, or of its own motion, or upon the application of any party, and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that, in the opinion of the Board, is a question of law.

Idem

(2) The Divisional Court shall hear and determine the stated case and remit it to the Board with the opinion of the Court thereon.

Appeal to
Divisional
Court

18.—(1) An appeal lies to the Divisional Court from any order of the Board upon a question of law or jurisdiction, but no such appeal lies unless leave to appeal is obtained from the Court within thirty clear days of the making of the order sought to be appealed from or within such further time as the Court under the special circumstances of the case allows.

Board and
Superin-
tendent may
be heard

(2) The Board and the Superintendent are entitled to be heard by counsel or otherwise upon the argument of any such appeal.

Board to act

(3) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with such opinion, but in no case shall such order be retroactive in its effect.

Not liable for
costs

(4) The Board is not liable for costs in connection with any appeal or application for leave to appeal under this section.

(5) An order of the Board takes effect at the time set out in the order, and its operation is not suspended by an appeal unless the Court otherwise orders. No stay

PART II

RATE AND DIVIDEND REVIEW

19.—(1) The Lieutenant Governor in Council may prescribe the classes of risk exposures that may be considered in determining the premiums for coverages for different categories of automobile insurance and the procedures to be followed in assigning insureds and vehicles to any such class of risk exposure. Classes of risk exposure

(2) Subsection (1) is amended on a day to be named by proclamation of the Lieutenant Governor by striking out “Lieutenant Governor in Council” in the first line and inserting in lieu thereof “Board, by order, following an industry-wide hearing”. Amendment

20.—(1) Upon classes of risk exposure being prescribed for a category of automobile insurance, the Board, following an industry-wide hearing, shall set a rate or range of rates with respect to each such class of risk exposure. Premium rates to be set by Board

(2) The Board may hold industry-wide hearings to review any rates or range of rates set by it and following such a hearing may vary any such rate or range of rates. Review

(3) A rate or range of rates set by the Board may be expressed in dollar terms or in such other manner as the Board considers appropriate so that a person may determine the rate or range of rates for each class of risk exposure. Expression of rates

(4) In setting a rate or range of rates, the Board shall set a rate or range of rates that in the opinion of the Board is just and reasonable and not excessive or inadequate. Fair rates

(5) An industry-wide hearing shall be on the motion of the Board or on request of the Minister. Hearing

(6) The Board in its discretion may consider at any one hearing the rate or range of rates for such class or classes of risk exposure for such category or categories of automobile insurance as it considers appropriate. Idem

(7) In determining rates or ranges of rates, the Board may consider any financial or other matter directly or indirectly affecting rates. Scope

Publication
of proposals

(8) The Board may, for the purposes of an industry-wide hearing, publish proposed rates or ranges of rates prepared by such person or persons as may be designated by the Board for any class or classes of risk exposures for any category or categories of automobile insurance and the Board shall make copies thereof available to the public without charge.

Response of
public

(9) The Board shall establish a procedure to give notice to the public of proposed rates or ranges of rates and to receive written submissions from the public in lieu of or in addition to any participation in a hearing.

Pre-hearing

(10) Before the commencement of an industry-wide hearing, the Board, after giving the parties an opportunity to be heard, may identify the issues that in its opinion are to be determined at the industry-wide hearing.

Effective
date

(11) A rate or range of rates set by the Board takes effect 120 days after the Board makes its order setting the rate or range of rates unless the Board otherwise orders.

Idem

(12) Despite subsection (11), an insurer may, by notice in writing to the Board, decide that the rate or range of rates set by the Board takes effect with respect to it on such day that is at least sixty days and less than 120 days after the Board's order as may be set out in the notice.

Revocation
of approved
rates

(13) If the Board under subsection (2) establishes a new rate or range of rates, all approvals of rates previously given under sections 22, 23 and 24 for that class of risk exposure shall be deemed to be revoked on the day the new rate or ranges of rates takes effect.

Amendment

(14) Subsection (2) is repealed on a day to be named by proclamation of the Lieutenant Governor and the following substituted therefor:

Review

(1a) The Board may hold industry-wide hearings for the purpose of reviewing either or both the classes of risk exposure for different categories of automobile insurance and the rates or ranges of rates set by it.

Variation of
rates

(2) Following an industry-wide hearing at which a rate or range of rates set by it is considered, the Board may vary the rate or range of rates and where classes of risk exposure are considered, it may vary the classes.

and on that day the following subsection is added to this section:

(5a) Any person may apply to the Board for changes in the classes of risk exposure, and where the Board, in its absolute discretion, is of the opinion that it would be in the public interest to consider the proposed changes, the Board shall hold an industry-wide hearing to review the proposed changes in the classes of risk exposure and the rates or ranges of rates with respect to the changes in the classes of risk exposure. Idem

(15) An industry-wide hearing commenced before the date named in the proclamation under subsection (14) shall be completed and the Board may make orders following the hearing as if this section had not been amended by that subsection. Transitional

21.—(1) Unless otherwise permitted under this Act, no insurer shall, Prohibition

(a) determine rates for any category of automobile insurance except on the basis of the prescribed classes of risk exposure for that category; or

(b) charge any rate other than,

(i) a rate that has been approved by the Board under section 22 or 23 in relation to that insurer, or

(ii) a rate that may be charged under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act* where the contract has been submitted to the insurer under that Act.

R.S.O. 1980,
c. 83

(2) Subsection (1) does not apply to an insurer with respect to a particular category of automobile insurance until the rates or ranges of rates with respect to the prescribed classes of risk exposure for that category have been set by the Board and have taken effect. Application

(3) Where an insurer writes contracts of automobile insurance that are not within a category of automobile insurance for which the rates or ranges of rates have been set under section 20, the insurer shall not charge any rate in respect of a coverage under such a contract that exceeds, Prohibition,
transitional

(a) the capped rate for the coverage where no order has been made under this section; or

(b) the rate set out in an order made under this section where such an order has been made.

Rates, transi-
tional

(4) An insurer may apply to the Board for an order to increase any of its capped rates in respect of coverages referred to in subsection (3) and the Board may approve the increase if the insurer demonstrates that,

- (a) the circumstances of the insurer justify the increase; and
- (b) the resulting rate is just and reasonable and not excessive.

Idem

(5) The Board, in lieu of approving an increase of a capped rate, may reject or vary the rates proposed by the applicant having regard to the criteria set out in clauses (4) (a) and (b) and, if it is of the opinion that a capped rate that is the subject of the application is excessive, it may reduce the capped rate.

Increase of
capped rates

(6) Where permitted by the regulations, an insurer may increase its capped rates by an amount that does not exceed the prescribed percentage.

New insurers
and
coverages

(7) Where an insurer was not providing a coverage on the 23rd day of April, 1987 but subsequently provides the coverage, the capped rate for the coverage is,

- (a) with respect to a coverage described in clause (a) of the definition of "capped rate" in subsection (8), the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date; and
- (b) with respect to a coverage described in clause (b) or (c) of the said definition, 90 per cent of the premium described in clause (a) of this subsection.

Definitions

(8) In this section,

"capped rate" means,

- (a) in the case of any coverage under a contract of automobile insurance, other than a coverage provided through the Facility Association or a coverage to which clause (b) or (c) applies, the lesser of,
 - (i) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using

the rules, procedures and factors used by the insurer on that date, and

- (ii) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date,
- (b) in the case of a premium for any coverage determined in whole or in part on the basis that an insured under the contract is a male under the age of twenty-five years,
 - (i) 90 per cent of the premium described in subclause (a) (ii) if the insured is insured through the Facility Association,
 - (ii) 90 per cent of the lesser of the premiums described in subclauses (a) (i) and (ii) if the insured is not insured through the Facility Association,
- (c) in the case of a premium for any coverage determined in whole or in part on the basis that an automobile insured under the contract is a taxi, the lesser of,
 - (i) the premium described in subclause (a) (i), and
 - (ii) 90 per cent of the premium described in subclause (a) (ii);

“Facility Association rate” means the premium for a coverage determined under the Plan of Operation of the Facility Association under the *Compulsory Automobile Insurance Act*;

R.S.O. 1980,
c. 83

“insured” means an insured as defined in section 201 of the *Insurance Act*.

R.S.O. 1980,
c. 218

(9) A reference in this section to “capped rate” shall be deemed to include a reference to a capped rate as determined by the Board under subsections (4) and (5) and to a capped rate as increased under subsection (6).

Idem

22.—(1) An insurer that intends to charge the rate set under section 20 or a rate within the range of rates set under

Approval of
rates

that section for a class of risk exposure shall apply to the Board for approval of the rate it intends to charge.

Timing

- (2) An application shall be made under subsection (1),
- (a) within thirty days of an order being made under section 20 setting a rate or range of rates;
 - (b) before varying any rate previously approved by the Board, where the rate, when varied, will be within the range of rates set out under section 20; and
 - (c) before entering any contract of automobile insurance with respect to which a rate or range of rates has been set under section 20, where the insurer was not writing contracts that covered that class of risk exposure at the time the rate or range of rates was set.

Statutory declaration

- (3) An application under subsection (1) shall be accompanied by the statutory declaration of an officer of the insurer declaring that the proposed rate is the same as the rate set by the Board or is within the range of rates set by the Board, as the case may be.

Extension of time

- (4) On the application of the insurer made not less than three days that are not a Saturday or holiday before the expiry of the thirty-day period referred to in clause (2) (a), the Board may extend the period for a period not exceeding thirty days.

Idem

- (5) Where an application is received under subsection (4), the Board shall be deemed to have approved the application unless it holds a hearing in respect of the application before the expiry of the thirty-day period referred to in clause (2) (a).

Late filing

- (6) The Board shall accept applications received by it under subsection (1) after the expiry of a limitation period prescribed by this section but such acceptance does not relieve an insurer from prosecution under this Act.

Approval

- (7) An application under subsection (1) shall be deemed to have been approved by the Board twenty days after its filing unless the Board within that twenty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that the rate is not the same as the rate set by the Board under section 20 or within the range of rates set under that section.

(8) Where the Board advises an applicant orally that it has not approved an application under subsection (1), it shall forthwith mail a written notice to the insurer confirming that fact. Idem

(9) Where the Board notifies an insurer that it has not approved an application under subsection (1), it shall hold a hearing. Hearing

(10) Although an application may be deemed to have been approved under subsection (7), if the Board is subsequently of the opinion that the rate is not the same as the rate set under section 20 or within the range of rates set under that section, the Board shall hold a hearing into the matter. Idem

(11) Following a hearing under subsection (9) or (10), the Board may approve the application or it may vary the rate to the rate set under section 20 or to a rate within the range of rates set under that section and the rate as so varied shall be deemed to be a rate approved under this section. Powers of Board

(12) The Board may waive public notice with respect to a hearing under this section. Public notice may be waived

23.—(1) Where an insurer wishes to charge a rate for a class of risk exposure other than a rate to which section 22 applies, the insurer shall apply to the Board for approval of the rate. Rates outside range

(2) Except as provided in subsections (3) and (5), the Board shall hold a hearing with respect to applications under subsection (1). Hearing required

(3) Where all of the rates included in an application under subsection (1) are below the rates or ranges of rates set under section 20, the application shall be deemed to have been approved by the Board thirty days after its filing, unless the Board within that thirty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that, Exception

(a) it is in the public interest to hold a hearing on the application; or

(b) the Board does not have sufficient information upon which to make a decision concerning the application.

(4) Where the Board advises an applicant orally that it has not approved an application referred to in subsection (3), it Idem

shall forthwith mail a written notice to the insurer confirming that fact.

Filing of
additional
information

(5) Where the Board advises an applicant that it has not approved an application referred to in subsection (3) because of insufficient information, the Board in its discretion may permit the insurer to file additional information within a specified period and it may extend the thirty-day period accordingly.

Powers of
the Board

(6) Following a hearing required by this section, the Board may approve the application or it may reject or vary the proposed rate and the rate so varied shall be deemed to be a rate approved under this section.

Public notice
may be
waived

(7) The Board may waive public notice with respect to a hearing under this section.

Fair rates

(8) Where an insurer applies for the approval of any rate under this section, the insurer must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate and that the circumstances of the insurer justify the use of the proposed rate.

Rates
pending
decision

(9) Despite subsection 20 (13), where an application is made under this section, the insurer, until the Board makes its decision with respect to the application, may continue to charge the rate for the class of risk exposure to which the application relates that it was charging immediately before the application was filed with the Board or it may charge a lower rate.

Idem

(10) Where the rate approved by the Board under this section is less than the rate charged by the insurer, as permitted by subsection (9), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, the insurer shall reimburse its policyholders for any excess of premiums.

Facility
Association
rates

24.—(1) Subject to subsection (12) but despite any other provision of this Act or the regulations, the Facility Association shall not promulgate any rate in respect of contracts of automobile insurance provided under the Plan of Operation under the *Compulsory Automobile Insurance Act* that has not been set or approved by the Board under this section.

R.S.O. 1980,
c. 83

Idem

(2) The Facility Association shall apply to the Board for approval of rates prepared by it under section 10 of the *Compulsory Automobile Insurance Act*.

(3) The Board of its own motion may, and at the request of the Minister shall, review rates in respect of contracts of automobile insurance provided under the Plan of Operation under the *Compulsory Automobile Insurance Act* and, following a hearing, may set rates that it considers to be just and reasonable and not excessive or inadequate in respect of such contracts.

Idem

R.S.O. 1980,
c. 83

(4) Where a rate or range of rates is set under section 20 for a class of risk exposure, all rates in respect of that class promulgated by the Facility Association before the coming into force of this section or set under subsection (3) shall be deemed to be revoked on the day the rate or range of rates takes effect.

Revocation
of rates

(5) Where a rate will be revoked under subsection (4) or an approval will be revoked under subsection 20 (13), the Facility Association, within thirty days of an order being made under section 20 setting a rate or range of rates, shall prepare and apply to the Board for approval to promulgate a rate that,

Approval of
rates

(a) is the rate set under section 20 or is a rate within the range of rates set under that section; or

(b) is not a rate to which clause (a) applies.

(6) The Facility Association may at any time apply to the Board for the variation of any rate previously promulgated by it.

Idem

(7) Subsections 22 (3) to (12) apply with necessary modifications to the approval of a rate to which clause (5) (a) applies.

Procedures
and powers
of Board

(8) Where an application is made under this section and subsections 22 (3) to (12) do not apply to the application,

Idem

(a) the Facility Association must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate;

(b) the Board may approve, reject or vary the proposed rate.

(9) Despite subsection 20 (13), if the Facility Association makes an application under clause (5) (b) or applies to vary a rate approved in an application under clause (5) (a) so that the rate will no longer be the rate set under section 20 or within the range of rates set under that section, the rates for the class of risk exposure to which the application relates that

Rates
pending
decision

were in effect under the Plan of Operation immediately before the application continue in effect until the Board makes its decision.

Idem

(10) Where the Facility Association makes an application described in subsection (8) and the Board approves a rate that is less than the rate continued in effect under subsection (9), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, an insurer shall reimburse its policyholders for any excess of premiums.

Promulgation

(11) The Facility Association shall promulgate rates set or approved under this section forthwith after they are approved or set.

Existing rates
R.S.O. 1980,
c. 83

(12) Subject to subsection (4), rates promulgated by the Facility Association under section 10 of the *Compulsory Automobile Insurance Act* before the coming into force of the section continue in force until they are varied in accordance with this section.

Dividends

25.—(1) No insurer shall issue a dividend in respect of a contract of automobile insurance unless the dividend has been approved by the Board.

Power of
Board

(2) Where an application is made under this section, the Board may approve, reject or vary the proposed dividend.

Matters to be
considered

(3) Where an insurer applies for the approval of a dividend under this section, the insurer must demonstrate that the proposed dividend is just and reasonable and not excessive and that the circumstances of the insurer justify the proposed dividend.

Hearing not
required

(4) The Board may dispense with a hearing with respect to an application under this section.

PART III

ENFORCEMENT, REGULATIONS AND MISCELLANEOUS

Offences and
penalties

26.—(1) Every person who contravenes or fails to comply with this Act, the regulations or an order of the Board is guilty of an offence and on conviction is liable to a fine of not more than \$25,000, in the case of an individual, and not more than \$100,000, in any other case.

(2) If a corporation or the Facility Association contravenes or fails to comply with this Act, the regulations or an order of the Board, every officer or director thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or Facility Association, as the case may be, has been prosecuted or convicted.

Parties

(3) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

Consent

(4) No proceeding for an offence under this Act shall be commenced in any court more than two years after the facts upon which the proceedings are based first came to the knowledge of the Board.

Limitation period

27.—(1) The Superintendent, with the approval of the Lieutenant Governor in Council, may issue policy statements on matters related to categories of automobile insurance, classes of risk exposure and automobile insurance rates and dividends.

Policy statements

(2) A policy statement takes effect on the day it is published in *The Ontario Gazette*.

When effective

(3) In making orders under this Act, the Board shall have regard to the policy statements issued under this section.

Effect of statements

28. The Lieutenant Governor in Council may require the Board to examine and report on any question related to automobile insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

References

29.—(1) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;
- (b) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which Part II applies;
- (c) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;

- (d) prescribing the manner of gathering statistics and other information in relation to automobile insurance;
- (e) prescribing information to be filed with the Board by insurers and insurers' associations and the Facility Association, the time or times at which the information is to be filed and requiring that the accuracy of the information be certified by an actuary or an accountant as may be appropriate;
- (f) prescribing fees payable with respect to proceedings before the Board and with respect to the fees referred to in section 15;
- (g) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations;
- (h) permitting insurers to increase their capped rates as defined in subsection 21 (8) by such percentage as is set out in the regulations;
- (i) prescribing forms including affidavits and statutory declarations and providing for their use;
- (j) authorizing the Board, following a hearing by the Board, to approve risk management programs for one or more policyholders within such class or classes of policyholders as may be named in the regulations.

Idem

(2) A regulation made under clause (1) (h) may be made retroactive to the 1st day of January, 1988.

Amendments

(3) On a day to be named by proclamation of the Lieutenant Governor,

- (a) subsection (1) is amended by striking out clauses (a), (b), (c), (g) and (h); and**
- (b) subsection (2) is repealed and the following substituted therefor:**

Idem

(1a) The Board, by order, may make regulations,

- (a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;

- (b) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;
- (c) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which Part II applies;
- (d) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations.

(2) Regulations made under clauses (1) (a), (b), (c) and (g), and section 19, as they read before the coming into force of this subsection, continue in force until remade or revoked by the Board. Transitional

30.—(1) The *Regulations Act* does not apply to rules made under clause 12 (1) (a) or to orders of the Board. Non-application of R.S.O. 1980, c. 446

(2) A regulation made by the Board under section 19 or 29 does not come into force until it is published in *The Ontario Gazette* or until such date following the publication as is set out in the regulation. Publication required

(3) Subsection (2) comes into force on the day named in the proclamation under subsection 29(3). Commencement

31. In the event of conflict between this Act and any other Act, except the *Human Rights Code, 1981*, this Act prevails. Conflict with other Acts 1981, c. 53

32.—(1) Subsections 10 (3) to (13) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

(3) The Association may prepare rates in respect of contracts provided under the Plan. Rates

(4) Rates prepared under subsection (3) do not come into effect until approved by the Ontario Automobile Insurance Board. Idem

(2) Clause 15 (d) of the said Act is repealed.

33.—(1) No insurer shall differentiate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status, family status or handicap. Prohibition against discrimination

Commencement (2) Subsection (1) comes into force on the day named in the proclamation under subsection 29(3).

Commence-
ment **34.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title **35.** The short title of this Act is the *Ontario Automobile Insurance Board Act, 1988*.

Bill 3

An Act to protect the Public Health and Comfort and the Environment by Prohibiting and Controlling Smoking in Public Places

Mr. Sterling



1st Reading November 4th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill limits smoking in indoor public places, public vehicles and in certain areas of health care facilities and requires employers to prohibit smoking in an enclosed area of a workplace if 1/3 of the persons working in the area so request or if a person whose health is adversely affected by smoking in the area so requests. Provision is made for the designation of smoking areas in public places and in workplaces where to do so will not interfere with non-smokers. Patients in health care facilities are given the right in most cases to request a non-smoking room. Municipalities are authorized to pass non-smoking by-laws.

Bill 3

1987

**An Act to protect the
Public Health and Comfort and the Environment by
Prohibiting and Controlling Smoking in Public Places**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“enclosed public place” means,

- (a) an enclosed indoor area that is open to the public during the times that it is open to the public and, without limiting the generality of the foregoing, includes those parts of a restaurant, health care facility, retail store, commercial establishment or an office building or educational institution that are normally open to clients, customers, patients, students or other members of the public, and
- (b) a bus or other vehicle that is used to provide transportation to the general public for a fee during the time that it is so used;

“health care facility” means a facility in which patients are or may be admitted for medical treatment or care and includes a hospital, nursing home and medical clinic;

“prescribed” means prescribed by the regulations made under this Act;

“smoking” includes holding or having control over a lighted cigarette, cigar or pipe or any other lighted smoking equipment and “smoke” has a corresponding meaning.

2.—(1) In this section, “medical officer of health” means a medical officer of health as defined in the *Health Protection and Promotion Act, 1983*.

Definition
1983, c. 10

Enforcement
of Act

(2) A medical officer of health for an area or a person performing the duties of a medical officer of health for an area is responsible for the enforcement of this Act in that area and for the purpose has the powers of a medical officer of health under Part V of the *Health Protection and Promotion Act, 1983*.

1983, c. 10

No smoking
in public
place

3.—(1) Subject to the regulations, no person shall smoke in an enclosed public place unless the person is in a specific area of that place designated under subsection (2) as an area where smoking is permitted.

Designate
smoking
areas

(2) The person in charge of an enclosed public place may designate a specific area of that place as an area where smoking is permitted by posting a sign in the prescribed form and manner if,

- (a) a reasonably substantial area of the place is not so designated; and
- (b) the physical barriers and ventilation systems are adequate to minimize any harmful effects or discomfort the smoking may cause to persons in the area not so designated.

Exception for
schools

(3) Subsection (2) does not apply to those areas of a day care centre, nursery school or an elementary or secondary school to which students have access while students are present in the school or to a school bus while transporting students.

No smoking
in health
care facility

4.—(1) No person shall smoke in an area of a health care facility that is not an enclosed public place if the area is,

- (a) a kitchen or laboratory; or
- (b) a patient's room if the patient has requested that there be no smoking in his or her room.

Patient
advised of
right to no
smoking in
room

(2) A patient in a health care facility has the right to request that there be no smoking in his or her room and the person in charge of a health care facility shall ensure that on admission every patient is advised that if the patient so requests, smoking will be prohibited in that room.

Exception

(3) Despite subsections (1) and (2), where a patient's attending physician informs the administrator of a health care facility in writing that there are reasonable grounds to believe that,

- (a) prohibiting smoking in the patient's room might put the health of the patient at risk; and
- (b) the risk to the patient of prohibiting smoking is greater than the risk to another patient who requests a non-smoking room of exposure to second hand smoke,

and there is no other room available for the other patient, the administrator may permit the patient mentioned in clause (a) to smoke in the room, subject to whatever conditions the administrator considers appropriate.

5.—(1) No person shall smoke in an area of a workplace that is designated by the employer as an area where smoking is prohibited. No smoking in workplace, if designated

(2) An employer shall designate an enclosed area of a workplace as an area where smoking is prohibited if at least one third of the persons working in that area request the designation or if a person working in that area whose health is adversely affected by smoking in the area requests the designation. Designate no smoking areas

(3) Where an employer designates an enclosed area of a workplace as an area where smoking is prohibited, the employer may designate a specific area of that place as an area where smoking is permitted if the physical barriers and ventilation systems are adequate to minimize any harmful effects or discomfort the smoking may cause to the persons requesting that there be no smoking. Designate smoking areas

(4) No person shall dismiss, discipline, penalize, coerce, intimidate or attempt to coerce or intimidate another person because the other person has made a request under subsection (2). No discipline for requesting

6.—(1) The person in charge of an enclosed public place or a health care facility shall make reasonable efforts to prevent persons from smoking in areas where smoking is prohibited by or under this Act, including, Duties of person in charge

- (a) posting a sign in the prescribed form and manner to notify persons that smoking is prohibited;
- (b) asking smokers to refrain from smoking if a person so requests; and
- (c) taking any other appropriate action.

Duties of
employer

(2) An employer shall make reasonable efforts to prevent persons from smoking in areas of a workplace where smoking is prohibited under this Act, including asking smokers to refrain from smoking if a person so requests and taking any other appropriate action.

Person in
charge may
further limit
smoking

7.—(1) Nothing in this Act limits the right of an employer or other person in charge of an enclosed public place, a workplace or a health care facility to further limit or ban smoking on all or a part of its premises.

Municipal
by-law may
further limit
smoking

(2) The council of a municipality may pass a by-law that further limits or bans smoking in enclosed public places, in health care facilities or in any class thereof in that municipality.

Offence

8.—(1) Every person who contravenes a provision of this Act other than subsection 4 (2), 5 (2) or (4) or section 6 or of the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$100.

Idem

(2) Every person who contravenes subsection 4 (2), 5 (2) or (4) or section 6 is guilty of an offence and on conviction is liable to a fine of not more than \$500 for a first offence or not more than \$3,000 for a second or subsequent offence.

Crown bound

9. This Act binds the Crown.

Regulations

10. The Lieutenant Governor in Council may make regulations,

- (a) exempting specified classes of enclosed public places from the application of any provision of this Act where, in the opinion of the Lieutenant Governor in Council, their application is impracticable and for the purpose prescribing conditions to be met before the exemption applies;
- (b) prescribing the form and manner of posting signs;
- (c) prescribing factors an employer shall take into account in determining whether a person's health is adversely affected for the purpose of subsection 5 (2).

Commence-
ment

11.—(1) This Act, except section 5 and subsection 7 (2), comes into force on the 1st day of January, 1989.

Idem

(2) Section 5 comes into force on the 1st day of July, 1989.

(3) Subsection 7 (2) shall be deemed to have come into Idem force on the 1st day of January, 1980.

12. The short title of this Act is the *Non-Smokers' Protec-* Short title
tion Act, 1987.

1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 4

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

The Hon. I. Scott

Attorney General

1st Reading November 4th, 1987

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTES

The purpose of the Bill is to permit the extension of the police complaints procedure to municipalities other than Metropolitan Toronto on the request of the municipality.

SECTIONS 1 and 2. The amendments to the definitions adjust the terminology so that it is not confined to Metropolitan Toronto but can apply to any municipality to which the Act applies. The Commissioner's title is changed from "Public Complaints Commissioner" to "Police Complaints Commissioner".

SECTION 3. The new section authorizes municipalities to adopt by-laws requesting the Lieutenant Governor in Council to designate them by regulation (under clause 31 (ca) of the Act, as enacted by section 16 of the Bill). A regulation may only be made where such a by-law is passed.

SECTIONS 4 to 7. The amendments make no change in substance except to refer to all designated municipalities.

SECTION 8. Under existing section 11 of the Act the report of the Bureau's investigation is given to certain persons. The amendment would provide that the result of a further investigation by the chief of police on the request of the Commissioner be given to the same persons.

SECTION 9. Existing section 14 authorizes the chief of police to delegate to an officer of the rank of inspector or higher. The amendment permits the delegation to be to a senior officer where the police force does not have the rank of inspector.

SECTION 10. The amendment removes any doubt that the appeal from the decision of a chief of police on a disciplinary hearing is to be taken under the *Metropolitan Toronto Police Force Complaints Act, 1984* and not the *Police Act*.

SECTIONS 11 to 15. See explanatory note for sections 4 to 7 (except for subsection 13 (1)).

Clause 23 (2) (b) of the Act makes the Attorney General a party to hearings before a board of inquiry, except when the hearing is in respect of a penalty imposed on an officer. The amendment in subsection 13 (1) ensures that the Attorney General is not excluded from participating where the officer's hearing is combined with the complainant's hearing.

SECTION 16. The amendment authorizes a municipality to be designated by regulation where it has passed a by-law requesting the designation.

SECTION 17. The short title of the Act is amended to remove specific reference to the Metropolitan Police Force.

Bill 4

1987

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clauses 1 (a) and (b) of the *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63, are repealed and the following substituted therefor:

(a) “Bureau” means a Public Complaints Investigation Bureau established under section 5.

(2) Clause 1 (c) of the said Act is amended by striking out “Public” in the first line and inserting in lieu thereof “Police”.

(3) Section 1 of the said Act is amended by adding thereto the following clause:

(ea) “designated municipality” means The Municipality of Metropolitan Toronto and the municipalities that are designated by a regulation made under clause 31 (ca).

(4) Clause 1 (i) of the said Act is repealed and the following substituted therefor:

(i) “police association” means the association as defined in the *Police Act* for the police force of a designated municipality. R.S.O. 1980,
c. 381

(5) Section 1 of the said Act is further amended by adding thereto the following subsection:

(2) A reference in this Act to a police officer, chief of police, police force, Bureau, board of inquiry or panel for boards of inquiry means the one appointed or established for the designated municipality that the subject officer serves. References to
local bodies

2. Section 2 of the said Act is amended by striking out “Metropolitan Police Force” in the third line and inserting in lieu thereof “police force of a designated municipality”.

3. The said Act is amended by adding thereto the following section:

By-laws to
request
application
of Act
R.S.O. 1980,
c. 381

2a.—(1) The council of a municipality that maintains a police force other than by agreement under section 64 of the *Police Act* may, by by-law, request the Lieutenant Governor in Council to designate the municipality as one to which this Act applies.

Idem

(2) The council of a municipality that maintains a police force by agreement under section 63 of the *Police Act* may pass a by-law under subsection (1) only if the municipality providing the services is a designated municipality.

4.—(1) Subsection 3 (1) of the said Act is amended by striking out “Public” in the second line and inserting in lieu thereof “Police”.

(2) Section 3 of the said Act is amended by adding thereto the following subsections:

Local offices

(6a) The Commissioner shall establish a local office in each designated municipality.

Communi-
cation to
Commis-
sioner by
local office

(6b) Any matter or thing that is required or permitted by this Act to be given to or served upon the Commissioner shall be given or served at the local office of the Commissioner.

5. Section 4 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 31, section 1, is repealed and the following substituted therefor:

Panels for
boards of
inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons for each designated municipality to act as members of boards of inquiry.

Recommen-
dations for
appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, who are jointly recommended for appointment by the board of commissioners of police of the designated municipality, or, where there is no board, the council, and by the police association, if any.

(4) If the joint recommendations referred to in subsection (3) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to make joint recommendations

(5) Before making the recommendation referred to in subsection (4), the Attorney General and Solicitor General shall consider any recommendations made by the board of commissioners of police or council alone or the police association alone.

Individual recommendations to be considered

(6) One-third of the members of the panel shall be persons recommended for appointment by the council of the designated municipality.

Recommendations for appointment

(7) If the recommendations referred to in subsection (6) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to make recommendations

(8) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

(9) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board of inquiry to which the member was assigned before the expiration of the term.

Continuance in office for uncompleted assignments

(10) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (6) of this section, respectively.

Members of Police Complaints Board under 1981, c. 43

(11) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Remuneration

6. Subsection 5 (1) of the said Act is amended by striking out “Metropolitan Police Force” in the second and third lines and inserting in lieu thereof “police force”.

7. Subsection 6 (1) of the said Act is amended by striking out “Metropolitan Toronto” in the second line and inserting in lieu thereof “the designated municipality”.

8. Subsection 11 (6) of the said Act is amended by adding at the end thereof “the chief of police, the complainant and the subject officer”.

9. Subsection 14 (7) of the said Act is amended by inserting after “higher” in the second line “or, if none, a senior officer who is not a member of the police association”.

10. Section 16 of the said Act is amended by striking out “the officer may appeal” in the third line and inserting in lieu thereof “any appeal therefrom shall be taken”.

11. Section 21 of the said Act is repealed and the following substituted therefor:

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the board of commissioners of police or council, as the case may be, shall forward the report along with their comments and any comments submitted to them by the chief of police or the police association, to the Attorney General, the Solicitor General and the Commissioner.

12. Subsection 22 (5) of the said Act is amended by inserting after “subsection 4 (3)” in the fifth line “or (4), as the case

may be” and by striking out “4 (4)” in the seventh line and inserting in lieu thereof “4 (6) or (7), as the case may be”.

13.—(1) Clause 23 (2) (b) of the said Act is amended by striking out “where an appeal” in the first line and inserting in lieu thereof “in respect of an appeal that”.

(2) Clause 23 (17) (a) of the said Act is amended by striking out “Metropolitan Police Force” in the first and second lines and inserting in lieu thereof “police force”.

(3) Clause 23 (17) (b) of the said Act is amended by striking out “Metropolitan Police Force” in the first and second lines and inserting in lieu thereof “police force”.

(4) Subsection 23 (20) of the said Act is amended by striking out “Metropolitan Board of Commissioners of Police” in the first line and inserting in lieu thereof “board of commissioners of police for the designated municipality or, where there is no board, the council”.

14. Subsection 26 (1) of the said Act is amended by striking out “Metropolitan Police Force” in the second and third lines and inserting in lieu thereof “police force”.

15. Section 29 of the said Act is amended by striking out “The Municipality of Metropolitan Toronto” in the second and third lines and inserting in lieu thereof “a designated municipality”.

16. Section 31 of the said Act is amended by adding thereto the following clause:

- (ca) designating a municipality that has passed a by-law under section 2a as a municipality to which this Act applies.

17. Section 36 of the said Act is repealed and the following substituted therefor:

36. The short title of this Act is the *Police Force Complaints Act, 1984*. Short title

18e. This Act comes into force on the day it receives Royal Assent. Commence-
ment

19. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Amendment Act, 1987*. Short title

Bill 5

An Act to amend the Proceedings Against the Crown Act

The Hon. I. Scott
Attorney General

1st Reading November 4th, 1987
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

Section 25 of the Act permits garnishment against the Crown. The amendment provides that the garnishment is effective against only the amounts payable to the debtor by the administrative unit served with notice of garnishment. The amendment also enlarges the authority to make regulations in order to provide for a form of statement of particulars, to provide for the method of service and to extend the response time to an additional period of not more than thirty days.

Bill 5

1987

An Act to amend the Proceedings Against the Crown Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 25 (2a) of the *Proceedings Against the Crown Act*, being chapter 393 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1985, chapter 6, section 16, is amended by adding at the end thereof “subject to section 7 of the *Wages Act*”.

(2) Subsection 25 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 88, section 1 and amended by the Statutes of Ontario, 1985, chapter 6, section 16, is repealed and the following substituted therefor:

(3) A garnishment is effective against the Crown only in respect of amounts payable on behalf of the administrative unit served with notice of garnishment to the person named in the notice of garnishment. Limitation

(4) The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing the method of service on the Crown of notices of garnishment in place of the method prescribed in section 14;
- (b) providing that a notice of garnishment issued against the Crown is not effective unless a statement of particulars in the prescribed form is served with the notice of garnishment;
- (c) providing that a notice of garnishment issued against the Crown shall be deemed to be served on the day that is the number of days specified in the regulation after the actual date of service or after the effective date of service under the rules of the

court that issued the notice of garnishment, as the case may be, but the regulation shall not specify more than thirty days as the number of days;

- (d) prescribing the form of statement of particulars for the purposes of this section.

Interpretation

R.S.O. 1980,
cc. 106, 235

(5) In this section, “administrative unit” means a Ministry of the Government of Ontario, a Crown agency within the meaning of the *Crown Agency Act* or the Office of the Assembly under the *Legislative Assembly Act*.

Commence-
ment

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Proceedings Against the Crown Amendment Act, 1987*.

Bill 5

*(Chapter 29
Statutes of Ontario, 1988)*

An Act to amend the Proceedings Against the Crown Act

The Hon. I. Scott
Attorney General

<i>1st Reading</i>	November 4th, 1987
<i>2nd Reading</i>	June 2nd, 1988
<i>3rd Reading</i>	June 8th, 1988
<i>Royal Assent</i>	June 8th, 1988

Bill 5

1987

**An Act to amend the
Proceedings Against the Crown Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 25 (2a) of the *Proceedings Against the Crown Act*, being chapter 393 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1985, chapter 6, section 16, is amended by adding at the end thereof “subject to section 7 of the *Wages Act*”.

(2) Subsection 25 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 88, section 1 and amended by the Statutes of Ontario, 1985, chapter 6, section 16, is repealed and the following substituted therefor:

(3) A garnishment is effective against the Crown only in respect of amounts payable on behalf of the administrative unit served with notice of garnishment to the person named in the notice of garnishment. Limitation

(4) The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing the method of service on the Crown of notices of garnishment in place of the method prescribed in section 14;
- (b) providing that a notice of garnishment issued against the Crown is not effective unless a statement of particulars in the prescribed form is served with the notice of garnishment;
- (c) providing that a notice of garnishment issued against the Crown shall be deemed to be served on the day that is the number of days specified in the regulation after the actual date of service or after the effective date of service under the rules of the

court that issued the notice of garnishment, as the case may be, but the regulation shall not specify more than thirty days as the number of days;

- (d) prescribing the form of statement of particulars for the purposes of this section.

Interpretation

R.S.O. 1980,
cc. 106, 235

(5) In this section, “administrative unit” means a Ministry of the Government of Ontario, a Crown agency within the meaning of the *Crown Agency Act* or the Office of the Assembly under the *Legislative Assembly Act*.

Commence-
ment

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Proceedings Against the Crown Amendment Act, 1988*.

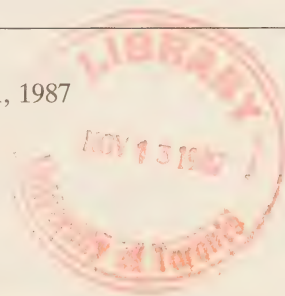
1ST SESSION, 34TH LEGISLATURE, ONTARIO36 ELIZABETH II, 1987

Bill 6

An Act to amend the Execution Act

The Hon. I. Scott
Attorney General

1st Reading November 4th, 1987
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of this Bill is to amend the *Execution Act* to provide that a writ of execution binds land after it is received and recorded by the sheriff. The Act now provides that a writ of execution binds land when it is received by the sheriff.

Bill 6 -

1987

An Act to amend the Execution Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 10 (1) of the *Execution Act*, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(1) Subject to the *Land Titles Act* and to section 11, a writ of execution binds the goods and lands against which it is issued from the time it has been received for execution and recorded by the sheriff.

Writs against
lands and
goods
R.S.O. 1980,
c. 230

(1a) Notwithstanding subsection (1), no writ of execution against goods other than bills of sale and instruments in the nature of chattel mortgages prejudices the title to such goods acquired by a person in good faith and for valuable consideration unless such person at the time of acquiring title had notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached has been delivered to the sheriff and remains in the sheriff's hands unexecuted.

Exception

(2) Subsection 10 (2) of the said Act is repealed and the following substituted therefor:

(2) The sheriff shall keep an index or a book in which shall be entered a record of all writs and renewals received.

Index to be
kept

2. Subsection 11 (2) of the said Act is amended by striking out "filed" in the fifth line and inserting in lieu thereof "received for execution and recorded by the sheriff".

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is the *Execution Amendment Act, 1987*.

Short title

Bill 6

(Chapter 37
Statutes of Ontario, 1988)

An Act to amend the Execution Act

The Hon. I. Scott
Attorney General

<i>1st Reading</i>	November 4th, 1987
<i>2nd Reading</i>	June 27th, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 6

1987

An Act to amend the Execution Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 10 (1) of the *Execution Act*, being chapter 146 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(1) Subject to the *Land Titles Act* and to section 11, a writ of execution binds the goods and lands against which it is issued from the time it has been received for execution and recorded by the sheriff.

Writs against
lands and
goods
R.S.O. 1980,
c. 230

(1a) Notwithstanding subsection (1), no writ of execution against goods other than bills of sale and instruments in the nature of chattel mortgages prejudices the title to such goods acquired by a person in good faith and for valuable consideration unless such person at the time of acquiring title had notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached has been delivered to the sheriff and remains in the sheriff's hands unexecuted.

Exception

(2) Subsection 10 (2) of the said Act is repealed and the following substituted therefor:

(2) The sheriff shall keep an index or a book in which shall be entered a record of all writs and renewals received.

Index to be
kept

2. Subsection 11 (2) of the said Act is amended by striking out "filed" in the fifth line and inserting in lieu thereof "received for execution and recorded by the sheriff".

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is the *Execution Amendment Act, 1988*.

Short title

Bill 7

**An Act to implement the
Model Law on
International Commercial
Arbitration
adopted by the
United Nations Commission
on International Trade Law**

The Hon. I. Scott
Attorney General

1st Reading November 5th, 1987
2nd Reading
3rd Reading
Royal Assent

Projet de loi 7

**Loi portant mise en
application de la Loi type
sur l'arbitrage commercial
international adoptée par la
Commission des Nations
Unies pour le droit
commercial international**

L'honorable I. Scott
procureur général

1^{re} lecture 5 novembre 1987
2^e lecture
3^e lecture
sanction royale

EXPLANATORY NOTES

The Bill implements the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law. The Model Law allows the parties to set the rules for their arbitration, but prescribes rules in the absence of any provisions to the contrary. The Model Law strictly limits the ability of the courts to intervene in an arbitration. It does, however, provide for the recognition and enforcement of foreign arbitral awards by the courts of Ontario.

The Bill includes definitions of certain terms used in the Model Law and supplements some of its provisions.

The *Foreign Arbitral Awards Act, 1986* which implements the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards is repealed since the Model Law itself serves to implement this Convention.

The Model Law is set out in the Schedule to the Bill.

NOTES EXPLICATIVES

Le projet de loi met en application la Loi type sur l'arbitrage commercial international (le «Code») adoptée par la Commission des Nations Unies pour le droit commercial international. Le Code permet aux parties d'établir les règles en vue de leur arbitrage, mais prescrit des règles dans le cas où les parties n'ont prévu aucune disposition. Le Code impose d'étroites limites au pouvoir qu'a le tribunal d'intervenir dans un arbitrage. Toutefois, il prévoit la reconnaissance et l'exécution des sentences arbitrales étrangères par les tribunaux de l'Ontario.

Le projet de loi donne la définition de certains termes ou expressions qui figurent dans le Code. En outre il complète quelques-unes de ses dispositions.

La *Loi de 1986 sur les sentences arbitrales étrangères* qui met en oeuvre la Convention de l'Organisation des Nations Unies pour la reconnaissance et l'exécution des sentences arbitrales étrangères, est abrogée, étant donné que le Code lui-même sert à mettre en oeuvre cette Convention.

Le texte du Code se trouve à l'annexe du projet de loi.

Bill 7**1987****An Act to implement the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition	1. —(1) In this Act,
“Code”	“Model Law” means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in the Schedule.
Idem	(2) Except as otherwise provided, words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Model Law.
Definition of “this State” in Model Law	(3) In article 1 (1) of the Model Law, an “agreement in force between this State and any other State or States” means an agreement between Canada and any other country or countries that is in force in Ontario.
Idem	(4) In articles 34 (2) (b) (i) and 36 (1) (b) (i) of the Model Law, “the law of this State” means the laws of Ontario and any laws of Canada that are in force in Ontario.
Idem	(5) In article 35 (2) of the Model Law, “this State” means Canada.
Idem	(6) In articles 1 (2) and (5), 27, 34 (2) (b) (ii) and 36 (1) (b) (ii) of the Model Law, “this State” means Ontario.
Definition of “different States” in Model Law	(7) In article 1 (3) of the Model Law, “different States” means different countries, and “the State” means the country.

Projet de loi 7**1987**

**Loi portant mise en application de la Loi type
sur l'arbitrage commercial international adoptée
par la Commission des Nations Unies pour le droit
commercial international**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) La définition qui suit s'applique à la présente loi. Définition

«Code» La Loi type sur l'arbitrage commercial international adoptée par la Commission des Nations Unies pour le droit commercial international le 21 juin 1985 et dont le texte est reproduit à l'annexe. «Model Law»

(2) Sauf disposition contraire, les termes de la présente loi s'entendent au sens du Code. Idem

(3) À l'article 1 (1) du Code, l'expression «accord multilatéral ou bilatéral en vigueur pour le présent État» s'entend de l'accord multilatéral ou bilatéral auquel le Canada est partie et qui est en vigueur en Ontario. Définition de «présent État» dans le Code

(4) Aux articles 34 (2) b) (i) et 36 (1) b) (i) du Code, l'expression «la loi du présent État» s'entend des lois de l'Ontario ainsi que des lois du Canada qui sont en vigueur en Ontario. Idem

(5) À l'article 35 (2) du Code, l'expression «le présent État» s'entend du Canada. Idem

(6) Aux articles 1 (2) et (5), 27, 34 (2) b) (ii) et 36 (1) b) (ii) du Code, l'expression «le présent État» s'entend de l'Ontario. Idem

(7) À l'article 1 (3) du Code, l'expression «États différents» s'entend des pays différents, et le terme «l'État» s'entend du pays. Définition d'«États différents» dans le Code

Definition of
"competent
court" in
Model Law

(8) In the Model Law, a reference to "a competent court" means the Supreme or District Court.

Model Law
in force in
Ontario

2.—(1) Subject to this Act, the Model Law is in force in Ontario.

Application

(2) The Model Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Act.

Idem

(3) Despite article 1 (3) (c) of the Model Law, an arbitration conducted in Ontario between parties that all have their places of business in Ontario is not international only because the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Conciliation
and other
proceedings

3. For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, use mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure.

Removal of
arbitrator

4.—(1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the Model Law, any hearing held prior to the replacement or removal shall start afresh.

Idem

(2) The parties may remove an arbitrator or a substitute arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed.

Article 11 (1)
of Model
Law replaced

5. Article 11 (1) of the Model Law shall be deemed to read as follows:

(1) A person of any nationality may be an arbitrator.

Rules
applicable to
substance of
dispute

6. Despite article 28 (2) of the Model Law, if the parties fail to make a designation pursuant to article 28 (1) of the Model Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

Consolidation
of
proceedings

7.—(1) The Supreme or District Court, on the application of the parties to two or more arbitration proceedings, may order,

(a) the arbitration proceedings to be consolidated, on terms it considers just;

(8) La mention de «tribunal compétent» dans le Code s'entend de la Cour suprême ou de la Cour de district.

Définition de «tribunal compétent» dans le Code

2 (1) Sous réserve de la présente loi, le Code est en vigueur en Ontario.

Code en vigueur en Ontario

(2) Le Code s'applique aux conventions d'arbitrage commercial international conclues et aux sentences arbitrales rendues avant ou après l'entrée en vigueur de la présente loi.

Champ d'application

(3) Malgré l'article 1 (3) c) du Code, l'arbitrage qui a lieu en Ontario entre des parties qui toutes ont leur établissement en Ontario, n'est pas considéré comme international pour la seule raison que les parties sont convenues expressément que l'objet de la convention d'arbitrage a des liens avec plus d'un pays.

Idem

3 Pour faciliter le règlement d'un différend, le tribunal arbitral peut, à toute étape de la procédure arbitrale, avoir recours, avec l'accord des parties, à la médiation, à la conciliation ou à tout autre mode de règlement. Il peut également, avec leur accord, reprendre son rôle d'arbitre.

Conciliation et autres modes de règlement

4 (1) Toute procédure orale antérieure à un remplacement ou à une révocation d'arbitre conforme au Code est, sauf décision contraire des parties, à recommencer.

Révocation d'arbitre

(2) Les parties peuvent révoquer un arbitre ou un arbitre remplaçant n'importe quand avant la sentence définitive, indépendamment du mode de nomination de celui-ci.

Idem

5 L'article 11 (1) du Code est réputé rédigé comme suit :

L'article 11 (1) du Code est remplacé

(1) Une personne peut être nommée arbitre quelle que soit sa nationalité.

6 Malgré l'article 28 (2) du Code, à défaut par les parties de procéder à la désignation prévue à son article 28 (1), le tribunal arbitral applique les règles de droit qu'il estime indiquées compte tenu des circonstances de l'espèce.

Règles applicables au fond du différend

7 (1) La Cour suprême ou la Cour de district, sur demande des parties à plus d'une procédure arbitrale, peut ordonner :

Réunion de procédures

a) leur réunion, aux conditions qu'elle estime équitables;

- (b) the arbitration proceedings to be heard at the same time, or one immediately after another; or
- (c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

Appointment
of arbitral
tribunal

(2) Where the court orders arbitration proceedings to be consolidated pursuant to clause (1) (a) and the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the court shall appoint the arbitral tribunal chosen by the parties, but, if the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding.

Court order
not required
for consoli-
dation

(3) Nothing in this section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation.

Stay of
proceedings

8. Where, pursuant to article 8 of the Model Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

Interim
measures and
security

9. An order of the arbitral tribunal under article 17 of the Model Law for an interim measure of protection and the provision of security in connection with it is subject to the provisions of the Model Law as if it were an award.

Recognition
and
enforcement
of foreign
arbitral
awards

10. For the purposes of articles 35 and 36 of the Model Law, an arbitral award includes a commercial arbitral award made outside Canada, even if the arbitration to which it relates is not international as defined in article 1 (3) of the Model Law.

Enforcement

11.—(1) An arbitral award recognized by the court is enforceable in the same manner as a judgment or order of the court.

Idem

(2) An arbitral award recognized by the court binds the persons as between whom it was made and may be relied on by any of those persons in any legal proceeding.

Crown bound

12. This Act applies to an arbitration to which Her Majesty is a party.

Aids to
interpretation

13. For the purpose of interpreting the Model Law, recourse may be had, in addition to aids to interpretation ordinarily available under the law of Ontario, to,

- b) leur audition simultanée ou consécutive;
- c) le sursis de telle ou telle d'entre elles jusqu'à détermination de n'importe laquelle des autres.

(2) Dans les cas où la Cour ordonne la réunion prévue à l'alinéa (1) a) et où les parties à ces procédures sont d'accord sur le choix d'un tribunal arbitral, celui-ci est nommé par la Cour. À défaut d'accord des parties, elle peut nommer un tribunal arbitral pour ces procédures.

Nomination
du tribunal
arbitral

(3) Le présent article n'a pas pour effet d'empêcher les parties à plus d'une procédure arbitrale de s'entendre sur leur réunion et de prendre toutes mesures nécessaires à cette fin.

Réunion sans
ordonnance

8 Dans le cas où, en vertu de l'article 8 du Code, un tribunal renvoie les parties à l'arbitrage, il est sursis aux procédures devant ce tribunal qui sont liées aux questions se rapportant à l'arbitrage.

Sursis de
procédures

9 Est assujettie aux dispositions du Code comme s'il s'agissait d'une sentence, l'ordonnance du tribunal arbitral prévue à l'article 17 du Code qui porte sur les mesures provisoires ou conservatoires ainsi que le versement d'une provision appropriée.

Mesures
provisoires

10 Pour l'application des articles 35 et 36 du Code, une sentence arbitrale s'entend notamment d'une sentence arbitrale commerciale rendue à l'extérieur du Canada, même si l'arbitrage auquel elle est liée n'est pas international au sens de l'article 1 (3) du Code.

Reconnais-
sance et exé-
cution des
sentences
arbitrales
étrangères

11 (1) La sentence arbitrale reconnue par le tribunal est exécutoire comme s'il s'agissait d'un jugement ou d'une ordonnance rendus par le tribunal.

Exécution

(2) La sentence arbitrale reconnue par le tribunal lie les personnes à l'égard desquelles elle a été rendue. Ces personnes peuvent invoquer la sentence dans toute action en justice.

Idem

12 La présente loi s'applique à l'arbitrage auquel Sa Majesté est partie.

Couronne liée

13 Afin d'interpréter le Code, on peut avoir recours aux documents suivants :

Guide d'inter-
prétation

- (a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session (June 3-21, 1985); and
- (b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law,

as published in The Canada Gazette, Part I, Vol. 120, No. 40, October 4, 1986, Supplement.

Repeal

14. The *Foreign Arbitral Awards Act, 1986*, being chapter 25, is repealed.

Commence-
ment

15. This Act comes into force on the day it receives Royal Assent.

Short title

16. The short title of this Act is the *International Commercial Arbitration Act, 1987*.

- a) le Rapport de la Commission des Nations Unies pour le droit commercial international sur les travaux de sa dix-huitième session, du 3 au 21 juin 1985;
- b) – le commentaire analytique figurant dans le rapport du Secrétaire général à la dix-huitième session de la Commission des Nations Unies pour le droit commercial international,

tels qu'ils sont publiés dans La Gazette du Canada, Partie I, Vol. 120, n° 40, le 4 octobre 1986, Supplément. Ces documents s'ajoutent aux guides d'interprétation auxquels on a recours habituellement en vertu de la loi de l'Ontario.

14 La *Loi de 1986 sur les sentences arbitrales étrangères*, Abrogation
qui constitue le chapitre 25, est abrogée.

15 La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en
vigueur

16 Le titre abrégé de la présente loi est *Loi de 1987 sur l'arbitrage commercial international*. Titre abrégé

SCHEDULE

UNCITRAL MODEL LAW ON INTERNATIONAL
COMMERCIAL ARBITRATION

(As adopted by the United Nations
Commission on International Trade Law on
21 June, 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. *Scope of application*

- (1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.
- (2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (3) An arbitration is international if:
- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
 - (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement,
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. *Definitions and rules of interpretation*

For the purposes of this Law:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

ANNEXE

LOI TYPE DE LA CNUDCI SUR L'ARBITRAGE COMMERCIAL
INTERNATIONAL

(telle qu'adoptée par la Commission des Nations Unies
– pour le droit commercial international le 21 juin 1985)

CHAPITRE PREMIER. DISPOSITIONS GÉNÉRALES

Article premier *Champ d'application*

(1) La présente loi s'applique à l'arbitrage commercial international; elle ne porte atteinte à aucun accord multilatéral ou bilatéral en vigueur pour le présent État.

(2) Les dispositions de la présente loi, à l'exception des articles 8, 9, 35 et 36, ne s'appliquent que si le lieu de l'arbitrage est situé sur le territoire du présent État.

(3) Un arbitrage est international si :

- a) les parties à une convention d'arbitrage ont, au moment de la conclusion de ladite convention, leur établissement dans des États différents; ou
- b) un des lieux ci-après est situé hors de l'État dans lequel les parties ont leur établissement :
 - (i) le lieu de l'arbitrage, s'il est stipulé dans la convention d'arbitrage ou déterminé en vertu de cette convention,
 - (ii) tout lieu où doit être exécutée une partie substantielle des obligations issues de la relation commerciale ou le lieu avec lequel l'objet du différend a le lien le plus étroit; ou
- c) les parties sont convenues expressément que l'objet de la convention d'arbitrage a des liens avec plus d'un pays.

(4) Aux fins du paragraphe (3) du présent article :

- a) si une partie a plus d'un établissement, l'établissement à prendre en considération est celui qui a la relation la plus étroite avec la convention d'arbitrage;
- b) si une partie n'a pas d'établissement, sa résidence habituelle en tient lieu.

(5) La présente loi ne porte atteinte à aucune autre loi du présent État en vertu de laquelle certains différends ne peuvent être soumis à l'arbitrage ou ne peuvent l'être qu'en application de dispositions autres que celles de la présente loi.

Article 2 *Définitions et règles d'interprétation*

Aux fins de la présente loi :

- a) le terme «arbitrage» désigne tout arbitrage que l'organisation en soit ou non confiée à une institution permanente d'arbitrage;
- b) l'expression «tribunal arbitral» désigne un arbitre unique ou un groupe d'arbitres;

- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. *Receipt of written communications*

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

Article 4. *Waiver of right to object*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. *Extent of court intervention*

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. *Court or other authority for certain functions of arbitration assistance and supervision*

The functions referred to in articles 11 (3), 11 (4), 13 (3), 14, 16 (3) and 34 (2) shall be performed by the Supreme or District Court.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. *Definition and form of arbitration agreement*

- (1) “Arbitration agreement” is an agreement by the parties to submit to

- c) le terme «tribunal» désigne un organisme ou organe du système judiciaire d'un État;
- d) lorsqu'une disposition de la présente loi, à l'exception de l'article 28, laisse aux parties la liberté de décider d'une certaine question, cette liberté emporte le droit pour les parties d'autoriser un tiers, y compris une institution, à décider de cette question;
- e) lorsqu'une disposition de la présente loi se réfère au fait que les parties sont convenues ou peuvent convenir d'une question, ou se réfère de toute autre manière à une convention des parties, une telle convention englobe tout règlement d'arbitrage qui y est mentionné;
- f) lorsqu'une disposition de la présente loi, autre que celles de l'alinéa a) de l'article 25 et de l'alinéa (2) a) de l'article 32, se réfère à une demande, cette disposition s'applique également à une demande reconventionnelle et lorsqu'elle se réfère à des conclusions en défense, elle s'applique également à des conclusions en défense sur une demande reconventionnelle.

Article 3 *Réception de communications écrites*

(1) Sauf convention contraire des parties :

- a) toute communication écrite est réputée avoir été reçue si elle a été remise soit à la personne du destinataire, soit à son établissement, à sa résidence habituelle ou à son adresse postale; si aucun de ces lieux n'a pu être trouvé après une enquête raisonnable, une communication écrite est réputée avoir été reçue si elle a été envoyée au dernier établissement, à la dernière résidence habituelle ou à la dernière adresse postale connus du destinataire par lettre recommandée ou tout autre moyen attestant la tentative de remise;
- b) la communication est réputée avoir été reçue le jour d'une telle remise.

(2) Les dispositions du présent article ne s'appliquent pas aux communications échangées dans le cadre de procédures judiciaires.

Article 4 *Renonciation au droit de faire objection*

Est réputée avoir renoncé à son droit de faire objection toute partie qui, bien qu'elle sache que l'une des dispositions de la présente loi auxquelles les parties peuvent déroger, ou toute condition énoncée dans la convention d'arbitrage, n'a pas été respectée, poursuit néanmoins l'arbitrage sans formuler d'objection promptement ou, s'il est prévu un délai à cet effet, dans ledit délai.

Article 5 *Domaine de l'intervention des tribunaux*

Pour toutes les questions régies par la présente loi, les tribunaux ne peuvent intervenir que dans les cas où celle-ci le prévoit.

Article 6 *Tribunal ou autre autorité chargé de certaines fonctions d'assistance et de contrôle dans le cadre de l'arbitrage*

Les fonctions mentionnées aux articles 11 (3), 11 (4), 13 (3), 14, 16 (3) et 34 (2) sont confiées à la Cour suprême ou à la Cour de district.

CHAPITRE II. CONVENTION D'ARBITRAGE

Article 7 *Définition et forme de la convention d'arbitrage*

(1) Une «convention d'arbitrage» est une convention par laquelle les parties

arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. *Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. *Arbitration agreement and interim measures by court*

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. *Number of arbitrators*

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. *Appointment of arbitrators*

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

décident de soumettre à l'arbitrage, tous les différends ou certains des différends qui se sont élevés ou pourraient s'élever entre elles au sujet d'un rapport de droit déterminé, contractuel ou non contractuel. Une convention d'arbitrage peut prendre la forme d'une clause compromissoire dans un contrat ou d'une convention séparée.

(2) La convention d'arbitrage doit se présenter sous forme écrite. Une convention est sous forme écrite si elle est consignée dans un document signé par les parties ou dans un échange de lettres, de communications télex, de télégrammes ou de tout autre moyen de télécommunications qui en atteste l'existence, ou encore dans l'échange d'une conclusion en demande et d'une conclusion en réponse dans lequel l'existence d'une telle convention est alléguée par une partie et n'est pas contestée par l'autre. La référence dans un contrat à un document contenant une clause compromissoire vaut convention d'arbitrage, à condition que ledit contrat soit sous forme écrite et que la référence soit telle qu'elle fasse de la clause une partie du contrat.

Article 8 *Convention d'arbitrage et actions intentées quant au fond devant un tribunal*

(1) Le tribunal saisi d'un différend sur une question faisant l'objet d'une convention d'arbitrage renverra les parties à l'arbitrage si l'une d'entre elles le demande au plus tard lorsqu'elle soumet ses premières conclusions quant au fond du différend, à moins qu'il ne constate que ladite convention est caduque, inopérante ou non susceptible d'être exécutée.

(2) Lorsque le tribunal est saisi d'une action visée au paragraphe (1) du présent article, la procédure arbitrale peut néanmoins être engagée ou poursuivie et une sentence peut être rendue en attendant que le tribunal ait statué.

Article 9 *Convention d'arbitrage et mesures provisoires prises par un tribunal*

La demande par une partie à un tribunal, avant ou pendant la procédure arbitrale, de mesures provisoires ou conservatoires et l'octroi de telles mesures par un tribunal ne sont pas incompatibles avec une convention d'arbitrage.

CHAPITRE III. COMPOSITION DU TRIBUNAL ARBITRAL

Article 10 *Nombre d'arbitres*

(1) Les parties sont libres de convenir du nombre d'arbitres.

(2) Faute d'une telle convention, il est nommé trois arbitres.

Article 11 *Nomination de l'arbitre ou des arbitres*

(1) Nul ne peut, en raison de sa nationalité, être empêché d'exercer des fonctions d'arbitre, sauf convention contraire des parties.

(2) Les parties sont libres de convenir de la procédure de nomination de l'arbitre ou des arbitres, sans préjudice des dispositions des paragraphes (4) et (5) du présent article.

(3) Faute d'une telle convention :

- a) en cas d'arbitrage par trois arbitres, chaque partie nomme un arbitre et les deux autres arbitres ainsi nommés choisissent le troisième arbitre; si une partie ne nomme pas un arbitre dans un délai de trente jours à compter de la réception d'une demande à cette fin émanant

- (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties:
 - (a) a party fails to act as required under such procedure; or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. *Grounds for challenge*

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. *Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

de l'autre partie, ou si les deux arbitres ne s'accordent pas sur le choix du troisième arbitre dans un délai de trente jours à compter de leur désignation, la nomination est effectuée, sur la demande d'une partie, par le tribunal ou autre autorité visé à l'article 6;

- b) en cas d'arbitrage par un arbitre unique, si les parties ne peuvent s'accorder sur le choix de l'arbitre, celui-ci est nommé, sur la demande d'une partie, par le tribunal ou autre autorité visé à l'article 6.

(4) Lorsque, durant une procédure de nomination convenue par les parties :

- a) une partie n'agit pas conformément à ladite procédure; ou
- b) les parties, ou deux arbitres, ne peuvent parvenir à un accord conformément à ladite procédure; ou
- c) un tiers, y compris une institution, ne s'acquitte pas d'une fonction qui lui est conférée dans ladite procédure,

l'une ou l'autre partie peut prier le tribunal ou autre autorité visé à l'article 6 de prendre la mesure voulue, à moins que la convention relative à la procédure de nomination ne stipule d'autres moyens d'assurer cette nomination.

(5) La décision sur une question confiée au tribunal ou autre autorité visé à l'article 6, conformément aux paragraphes (3) et (4) du présent article, n'est pas susceptible de recours. Lorsqu'il nomme un arbitre, le tribunal tient compte de toutes les qualifications requises de l'arbitre par convention des parties et de toutes considérations propres à garantir la nomination d'un arbitre indépendant et impartial et, lorsqu'il nomme un arbitre unique ou un troisième arbitre, il tient également compte du fait qu'il peut être souhaitable de nommer un arbitre d'une nationalité différente de celle des parties.

Article 12 *Motifs de récusation*

(1) Lorsqu'une personne est pressentie en vue de sa nomination éventuelle en qualité d'arbitre, elle signale toutes circonstances de nature à soulever des doutes légitimes sur son impartialité ou sur son indépendance. À partir de la date de sa nomination et durant toute la procédure arbitrale, l'arbitre signale sans tarder de telles circonstances aux parties, à moins qu'il ne l'ait déjà fait.

(2) Un arbitre ne peut être récusé que s'il existe des circonstances de nature à soulever des doutes légitimes sur son impartialité ou son indépendance, ou si celui-ci ne possède pas les qualifications convenues par les parties. Une partie ne peut récuser l'arbitre qu'elle a nommé ou à la nomination duquel elle a participé que pour une cause dont elle a eu connaissance après cette nomination.

Article 13 *Procédure de récusation*

(1) Sous réserve des dispositions du paragraphe (3) du présent article, les parties sont libres de convenir de la procédure de récusation de l'arbitre.

(2) Faute d'un tel accord, la partie qui a l'intention de récuser un arbitre expose par écrit les motifs de la récusation au tribunal arbitral, dans un délai de quinze jours à compter de la date à laquelle elle a eu connaissance de la constitution du tribunal arbitral ou de la date à laquelle elle a eu connaissance des circonstances visées à l'article 12 (2). Si l'arbitre récusé ne se déporte pas ou que l'autre partie n'accepte pas la récusation, le tribunal arbitral se prononce sur la récusation.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. *Failure or impossibility to act*

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. *Appointment of substitute arbitrator*

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. *Competence of arbitral tribunal to rule on its jurisdiction*

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

(3) Si la récusation ne peut être obtenue selon la procédure convenue par les parties ou en application du paragraphe (2) du présent article, la partie récusante peut, dans un délai de trente jours après avoir eu communication de la décision rejetant la récusation, prier le tribunal ou autre autorité visé à l'article 6 de prendre sur la récusation une décision qui ne sera pas susceptible de recours; dans l'attente de cette décision, le tribunal arbitral y compris l'arbitre récusé, peut poursuivre la procédure arbitrale et rendre une sentence.

Article 14 *Carence ou incapacité d'un arbitre*

(1) Lorsqu'un arbitre se trouve dans l'impossibilité de droit ou de fait de remplir sa mission ou, pour d'autres raisons, ne s'acquitte pas de ses fonctions dans un délai raisonnable, son mandat prend fin s'il se déporte ou si les parties conviennent d'y mettre fin. Au cas où il subsiste un désaccord quant à l'un quelconque de ces motifs, l'une ou l'autre partie peut prier le tribunal ou autre autorité visé à l'article 6 de prendre une décision, qui ne sera pas susceptible de recours, sur la cessation du mandat.

(2) Le fait qu'en application du présent article ou de l'article 13 (2), un arbitre se déporte ou qu'une partie accepte que le mandat d'un arbitre prenne fin n'implique pas reconnaissance des motifs mentionnés à l'article 12 (2) ou dans le présent article.

Article 15 *Nomination d'un arbitre remplaçant*

Lorsqu'il est mis fin au mandat d'un arbitre conformément à l'article 13 ou 14, ou lorsque celui-ci se déporte pour toute autre raison, ou lorsque son mandat est révoqué par accord des parties ou dans tout autre cas où il est mis fin à son mandat, un arbitre remplaçant est nommé conformément aux règles qui étaient applicables à la nomination de l'arbitre remplacé.

CHAPITRE IV. COMPÉTENCE DU TRIBUNAL ARBITRAL

Article 16 *Compétence du tribunal arbitral pour statuer sur sa propre compétence*

(1) Le tribunal arbitral peut statuer sur sa propre compétence, y compris sur toute exception relative à l'existence ou à la validité de la convention d'arbitrage. À cette fin, une clause compromissoire faisant partie d'un contrat est considérée comme une convention distincte des autres clauses du contrat. La constatation de nullité du contrat par le tribunal arbitral n'entraîne pas de plein droit la nullité de la clause compromissoire.

(2) L'exception d'incompétence du tribunal arbitral peut être soulevée au plus tard lors du dépôt des conclusions en défense. Le fait pour une partie d'avoir désigné un arbitre ou d'avoir participé à sa désignation ne la prive pas du droit de soulever cette exception. L'exception prise de ce que la question litigieuse excéderait les pouvoirs du tribunal arbitral est soulevée dès que la question alléguée comme excédant ses pouvoirs est soulevée pendant la procédure arbitrale. Le tribunal arbitral peut, dans l'un ou l'autre cas, admettre une exception soulevée après le délai prévu, s'il estime que le retard est dû à une cause valable.

(3) Le tribunal arbitral peut statuer sur l'exception visée au paragraphe (2) du présent article soit en la traitant comme une question préalable, soit dans sa sentence sur le fond. Si le tribunal arbitral détermine, à titre de question préalable, qu'il est compétent, l'une ou l'autre partie peut, dans un délai de trente jours après avoir été avisée de cette décision, demander au tribunal visé à l'article 6 de rendre une décision sur ce point, laquelle ne sera pas susceptible de recours; en attendant qu'il soit statué sur cette demande, le tribunal arbitral est libre de poursuivre la procédure arbitrale et de rendre une sentence.

Article 17. *Power of arbitral tribunal to order interim measures*

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS**Article 18.** *Equal treatment of parties*

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. *Determination of rules of procedure*

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. *Place of arbitration*

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. *Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. *Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 17 *Pouvoir du tribunal arbitral d'ordonner des mesures provisoires*

Sauf convention contraire des parties, le tribunal arbitral peut, à la demande d'une partie, ordonner à toute partie de prendre toute mesure provisoire ou conservatoire qu'il juge nécessaire en ce qui concerne l'objet du différend. Le tribunal arbitral peut, à ce titre, exiger de toute partie le versement d'une provision appropriée.

CHAPITRE V. CONDUITE DE LA PROCÉDURE ARBITRALE**Article 18** *Égalité de traitement des parties*

Les parties doivent être traitées sur un pied d'égalité et chaque partie doit avoir toute possibilité de faire valoir ses droits.

Article 19 *Détermination des règles de procédure*

(1) Sous réserve des dispositions de la présente loi, les parties sont libres de convenir de la procédure à suivre par le tribunal arbitral.

(2) Faute d'une telle convention, le tribunal arbitral peut, sous réserve des dispositions de la présente loi, procéder à l'arbitrage comme il le juge approprié. Les pouvoirs conférés au tribunal arbitral comprennent celui de juger de la recevabilité, de la pertinence et de l'importance de toute preuve produite.

Article 20 *Lieu de l'arbitrage*

(1) Les parties sont libres de décider du lieu de l'arbitrage. Faute d'une telle décision, ce lieu est fixé par le tribunal arbitral, compte tenu des circonstances de l'affaire, y compris les convenances des parties.

(2) Nonobstant les dispositions du paragraphe (1) du présent article, le tribunal arbitral peut, sauf convention contraire des parties, se réunir en tout lieu qu'il jugera approprié pour l'organisation de consultations entre ses membres, l'audition des témoins, des experts ou des parties, ou pour l'inspection de marchandises, d'autres biens ou de pièces.

Article 21 *Début de la procédure arbitrale*

Sauf convention contraire des parties, la procédure arbitrale concernant un différend déterminé débute à la date à laquelle la demande de soumission de ce différend à l'arbitrage est reçue par le défendeur.

Article 22 *Langue*

(1) Les parties sont libres de convenir de la langue ou des langues à utiliser dans la procédure arbitrale. Faute d'un tel accord, le tribunal arbitral décide de la langue ou des langues à utiliser dans la procédure. Cet accord ou cette décision, à moins qu'il n'en soit convenu ou décidé autrement, s'applique à toute déclaration écrite d'une partie, à toute procédure orale et à toute sentence, décision ou autre communication du tribunal arbitral.

(2) Le tribunal arbitral peut ordonner que toute pièce soit accompagnée d'une traduction dans la langue ou les langues convenues par les parties ou choisies par le tribunal arbitral.

Article 23. *Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. *Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. *Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. *Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, the arbitral tribunal,

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

Article 23 *Conclusions en demande et en défense*

(1) Dans le délai convenu par les parties ou fixé par le tribunal arbitral, le demandeur énonce les faits au soutien de sa demande, les points litigieux et l'objet de la demande et le défendeur énonce ses défenses à propos de ces questions, à moins que les parties ne soient autrement convenues des indications devant figurer dans les conclusions. Les parties peuvent accompagner leurs conclusions de toutes pièces qu'elles jugeront pertinentes ou y mentionner les pièces ou autres moyens de preuve qu'elles produiront.

(2) Sauf convention contraire des parties, l'une ou l'autre partie peut modifier ou compléter sa demande ou ses défenses, au cours de la procédure arbitrale, à moins que le tribunal arbitral considère ne pas devoir autoriser un tel amendement en raison du retard avec lequel il est formulé.

Article 24 *Procédure orale et procédure écrite*

(1) Sauf convention contraire des parties, le tribunal arbitral décide si la procédure doit comporter des phases orales pour la production de preuves ou pour l'exposé oral des arguments, ou si elle se déroulera sur pièces. Cependant, à moins que les parties n'aient convenu qu'il n'y aura pas de procédure orale, le tribunal arbitral organise une telle procédure à un stade approprié de la procédure arbitrale, si une partie lui en fait la demande.

(2) Les parties recevront suffisamment longtemps à l'avance notification de toutes audiences et de toutes réunions du tribunal arbitral tenues aux fins de l'inspection de marchandises, d'autres biens ou de pièces.

(3) Toutes les conclusions, pièces ou informations que l'une des parties fournit au tribunal arbitral doivent être communiquées à l'autre partie. Tout rapport d'expert ou document présenté en tant que preuve sur lequel le tribunal pourrait s'appuyer pour statuer doit également être communiqué aux parties.

Article 25 *Défaut d'une partie*

Sauf convention contraire des parties, si, sans invoquer d'empêchement légitime :

- a) le demandeur ne présente pas sa demande conformément à l'article 23 (1), le tribunal arbitral met fin à la procédure arbitrale;
- b) le défendeur ne présente pas ses défenses conformément à l'article 23 (1), le tribunal arbitral poursuit la procédure arbitrale sans considérer ce défaut en soi comme une acceptation des allégations du demandeur;
- c) l'une des parties omet de comparaître à l'audience ou de produire des documents, le tribunal arbitral peut poursuivre la procédure et statuer sur la base des éléments de preuve dont il dispose.

Article 26 *Expert nommé par le tribunal arbitral*

(1) Sauf convention contraire des parties, le tribunal arbitral :

- a) peut nommer un ou plusieurs experts chargés de lui faire rapport sur les points précis qu'il déterminera;
- b) peut demander à une partie de fournir à l'expert tous renseignements appropriés ou de lui soumettre ou de lui rendre accessibles, aux fins d'examen, toutes pièces ou toutes marchandises ou autres biens pertinents.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. *Court assistance in taking evidence*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. *Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. *Decision making by panel of arbitrators*

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. *Settlement*

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. *Form and contents of award*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) Sauf convention contraire des parties, si une partie en fait la demande ou si le tribunal arbitral le juge nécessaire, l'expert, après présentation de son rapport écrit ou oral, participe à une audience à laquelle les parties peuvent l'interroger et faire venir en qualité de témoins des experts qui déposent sur les questions litigieuses.

Article 27 *Assistance des tribunaux pour l'obtention de preuves*

Le tribunal arbitral, ou une partie avec l'approbation du tribunal arbitral, peut demander à un tribunal compétent du présent État une assistance pour l'obtention de preuves. Le tribunal peut satisfaire à cette demande, dans les limites de sa compétence et conformément aux règles relatives à l'obtention de preuves.

CHAPITRE VI. PRONONCÉ DE LA SENTENCE ET CLÔTURE DE LA PROCÉDURE

Article 28 *Règles applicables au fond du différend*

(1) Le tribunal arbitral tranche le différend conformément aux règles de droit choisies par les parties comme étant applicables au fond du différend. Toute désignation de la loi ou du système juridique d'un État donné est considérée, sauf indication contraire expresse, comme désignant directement les règles juridiques de fond de cet État et non ses règles de conflit de lois.

(2) À défaut d'une telle désignation par les parties, le tribunal arbitral applique la loi désignée par la règle de conflit de lois qu'il juge applicable en l'espèce.

(3) Le tribunal arbitral statue *ex aequo et bono* ou en qualité d'arbitre compositeur uniquement si les parties l'y ont expressément autorisé.

(4) Dans tous les cas, le tribunal arbitral décide conformément aux stipulations du contrat et tient compte des usages du commerce applicables à la transaction.

Article 29 *Prise de décisions par plusieurs arbitres*

Dans une procédure arbitrale comportant plus d'un arbitre, toute décision du tribunal arbitral est, sauf convention contraire des parties, prise à la majorité de tous ses membres. Toutefois, les questions de procédure peuvent être tranchées par un arbitre-président, si ce dernier y est autorisé par les parties ou par tous les membres du tribunal arbitral.

Article 30 *Règlement par accord des parties*

(1) Si, durant la procédure arbitrale, les parties s'entendent pour régler le différend, le tribunal arbitral met fin à la procédure arbitrale et, si les parties lui en font la demande et s'il n'y voit pas d'objection, constate le fait par une sentence arbitrale rendue par accord des parties.

(2) La sentence d'accord des parties est rendue conformément aux dispositions de l'article 31 et mentionne le fait qu'il s'agit d'une sentence. Une telle sentence a le même statut et le même effet que toute autre sentence prononcée sur le fond de l'affaire.

Article 31 *Forme et contenu de la sentence*

(1) La sentence est rendue par écrit et signée par l'arbitre ou les arbitres. Dans la procédure arbitrale comprenant plusieurs arbitres, les signatures de la majorité des membres du tribunal arbitral suffisent, pourvu que soit mentionnée la raison de l'omission des autres.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. *Termination of proceedings*

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. *Correction and interpretation of award: additional award*

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) (a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(2) La sentence est motivée, sauf si les parties sont convenues que tel ne doit pas être le cas ou s'il s'agit d'une sentence rendue par accord des parties conformément à l'article 30.

(3) La sentence mentionne la date à laquelle elle est rendue, ainsi que le lieu de l'arbitrage déterminé conformément à l'article 20 (1). La sentence est réputée avoir été rendue audit lieu.

(4) Après le prononcé de la sentence, une copie signée par l'arbitre ou les arbitres conformément au paragraphe (1) du présent article en est remise à chacune des parties.

Article 32 *Clôture de la procédure*

(1) La procédure arbitrale est close par le prononcé de la sentence définitive ou par une ordonnance de clôture rendue par le tribunal arbitral conformément au paragraphe (2) du présent article.

(2) Le tribunal arbitral ordonne la clôture de la procédure arbitrale lorsque :

- a) le demandeur retire sa demande, à moins que le défendeur y fasse objection et que le tribunal arbitral reconnaisse qu'il a légitimement intérêt à ce que le différend soit définitivement réglé;
- b) les parties conviennent de clore la procédure;
- c) le tribunal arbitral constate que la poursuite de la procédure est, pour toute autre raison, devenue superflue ou impossible.

(3) Le mandat du tribunal arbitral prend fin avec la clôture de la procédure arbitrale, sous réserve des dispositions de l'article 33 et du paragraphe (4) de l'article 34.

Article 33 *Rectification et interprétation de la sentence et sentence additionnelle*

(1) Dans les trente jours qui suivent la réception de la sentence, à moins que les parties ne soient convenues d'un autre délai :

- a) une des parties peut, moyennant notification à l'autre, demander au tribunal arbitral de rectifier dans le texte de la sentence toute erreur de calcul, toute erreur matérielle ou typographique ou toute erreur de même nature;
- b) si les parties en sont convenues, une partie peut, moyennant notification à l'autre, demander au tribunal arbitral de donner une interprétation d'un point ou passage précis de la sentence.

Si le tribunal arbitral considère que la demande est justifiée, il fait la rectification ou donne l'interprétation dans les trente jours qui suivent la réception de la demande. L'interprétation fait partie intégrante de la sentence.

(2) Le tribunal arbitral peut, de son propre chef, rectifier toute erreur du type visé à l'alinéa a) du paragraphe (1) du présent article dans les trente jours qui suivent la date de la sentence.

(3) Sauf convention contraire des parties, l'une des parties peut, moyennant notification à l'autre, demander au tribunal arbitral, dans les trente jours qui suivent la réception de la sentence, de rendre une sentence additionnelle sur des chefs de demande exposés au cours de la procédure arbitrale mais omis dans la sentence. S'il juge la demande justifiée, le tribunal arbitral complète sa sentence dans les soixante jours.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. *Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State, or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside, or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or
- (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) Le tribunal arbitral peut prolonger, si besoin est, le délai dont il dispose pour rectifier, interpréter ou compléter la sentence en vertu du paragraphe (1) ou (3) du présent article.

(5) Les dispositions de l'article 31 s'appliquent à la rectification ou l'interprétation de la sentence ou à la sentence additionnelle.

CHAPITRE VII. RECOURS CONTRE LA SENTENCE

Article 34 *La demande d'annulation comme recours exclusif contre la sentence arbitrale*

(1) Le recours formé devant un tribunal contre une sentence arbitrale ne peut prendre la forme que d'une demande d'annulation conformément aux paragraphes (2) et (3) du présent article.

(2) La sentence arbitrale ne peut être annulée par le tribunal visé à l'article 6 que si :

a) la partie en faisant la demande apporte la preuve :

- (i) qu'une partie à la convention d'arbitrage visée à l'article 7 était frappée d'une incapacité; ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du présent État, ou
- (ii) qu'elle n'a pas été dûment informée de la nomination d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses droits, ou
- (iii) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire, étant entendu toutefois que, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, seule la partie de la sentence contenant des décisions sur les questions non soumises à l'arbitrage pourra être annulé, ou
- (iv) que la constitution du tribunal arbitral, ou la procédure arbitrale, n'a pas été conforme à la convention des parties, à condition que cette convention ne soit pas contraire à une disposition de la présente loi à laquelle les parties ne peuvent déroger, ou, à défaut d'une telle convention, qu'elle n'a pas été conforme à la présente loi; ou

b) le tribunal constate :

- (i) que l'objet du différend n'est pas susceptible d'être réglé par arbitrage conformément à la loi du présent État, ou
- (ii) que la sentence est contraire à l'ordre public du présent État.

(3) Une demande d'annulation ne peut être présentée après l'expiration d'un délai de trois mois à compter de la date à laquelle la partie présentant cette demande a reçu communication de la sentence ou, si une demande a été faite en vertu de l'article 33, à compter de la date à laquelle le tribunal arbitral a pris une décision sur cette demande.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

- (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place, or
 - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(4) Lorsqu'il est prié d'annuler une sentence, le tribunal peut, le cas échéant et à la demande d'une partie, suspendre la procédure d'annulation pendant une période dont il fixe la durée afin de donner au tribunal arbitral la possibilité de reprendre la procédure arbitrale ou de prendre toute autre mesure que ce dernier juge susceptible d'éliminer les motifs d'annulation.

CHAPITRE VIII. RECONNAISSANCE ET EXÉCUTION DES SENTENCES

Article 35 *Reconnaissance et exécution*

(1) La sentence arbitrale, quel que soit le pays où elle a été rendue, est reconnue comme ayant force obligatoire et, sur requête adressée par écrit au tribunal compétent, est exécutée sous réserve des dispositions du présent article et de l'article 36.

(2) La partie qui invoque la sentence ou qui en demande l'exécution doit en fournir l'original dûment authentifié ou une copie certifiée conforme, ainsi que l'original de la convention d'arbitrage mentionnée à l'article 7 ou une copie certifiée conforme. Si ladite sentence ou ladite convention n'est pas rédigée dans une langue officielle du présent État, la partie en produira une traduction dûment certifiée dans cette langue.

Article 36 *Motifs de refus de la reconnaissance ou de l'exécution*

(1) La reconnaissance ou l'exécution d'une sentence arbitrale, quel que soit le pays où elle a été rendue, ne peut être refusée que :

- a) sur la demande de la partie contre laquelle elle est invoquée, si ladite partie présente au tribunal compétent auquel est demandée la reconnaissance ou l'exécution la preuve :
 - (i) qu'une partie à la convention d'arbitrage visée à l'article 7 était frappée d'une incapacité; ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du pays où la sentence a été rendue, ou
 - (ii) que la partie contre laquelle la sentence est invoquée n'a pas été dûment informée de la désignation d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses droits, ou
 - (iii) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire, étant entendu toutefois que, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, seule la partie de la sentence contenant des décisions sur les questions soumises à l'arbitrage pourra être reconnue et exécutée, ou
 - (iv) que la constitution du tribunal arbitral, ou la procédure arbitrale, n'a pas été conforme à la convention des parties ou, à défaut d'une telle convention, à la loi du pays où l'arbitrage a eu lieu, ou
 - (v) que la sentence n'est pas encore devenue obligatoire pour les parties ou a été annulée ou suspendue par un tribunal du pays dans lequel, ou en vertu de la loi duquel elle a été rendue; ou

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

b) si le tribunal constate que :

(i) l'objet du différend n'est pas susceptible d'être réglé par arbitrage conformément à la loi du présent État, ou que

(ii) la reconnaissance ou l'exécution de la sentence serait contraire à
_ l'ordre public du présent État.

(2) Si une demande d'annulation ou de suspension d'une sentence a été présentée à un tribunal visé au sous-alinéa (1) a) (v) du présent article, le tribunal auquel est demandée la reconnaissance ou l'exécution peut, s'il le juge approprié, surseoir à statuer et peut aussi, à la requête de la partie demandant la reconnaissance ou l'exécution de la sentence, ordonner à l'autre partie de fournir des sûretés convenables.

Bill 7

(Chapter 30
Statutes of Ontario, 1988)

**An Act to implement the
Model Law on
International Commercial
Arbitration
adopted by the
United Nations Commission
on International Trade Law**

The Hon. I. Scott
Attorney General

<i>1st Reading</i>	November 5th, 1987
<i>2nd Reading</i>	June 2nd, 1988
<i>3rd Reading</i>	June 8th, 1988
<i>Royal Assent</i>	June 8th, 1988

Projet de loi 7

(Chapitre 30
Lois de l'Ontario de 1988)

**Loi portant mise en
application de la Loi type
sur l'arbitrage commercial
international adoptée par la
Commission des Nations
Unies pour le droit
commercial international**

L'honorable I. Scott
procureur général

<i>1^{re} lecture</i>	5 novembre 1987
<i>2^e lecture</i>	2 juin 1988
<i>3^e lecture</i>	8 juin 1988
<i>sanction royale</i>	8 juin 1988

Bill 7**1987****An Act to implement the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition	1.— (1) In this Act,
“Code”	“Model Law” means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in the Schedule.
Idem	(2) Except as otherwise provided, words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Model Law.
Definition of “this State” in Model Law	(3) In article 1 (1) of the Model Law, an “agreement in force between this State and any other State or States” means an agreement between Canada and any other country or countries that is in force in Ontario.
Idem	(4) In articles 34 (2) (b) (i) and 36 (1) (b) (i) of the Model Law, “the law of this State” means the laws of Ontario and any laws of Canada that are in force in Ontario.
Idem	(5) In article 35 (2) of the Model Law, “this State” means Canada.
Idem	(6) In articles 1 (2) and (5), 27, 34 (2) (b) (ii) and 36 (1) (b) (ii) of the Model Law, “this State” means Ontario.
Definition of “different States” in Model Law	(7) In article 1 (3) of the Model Law, “different States” means different countries, and “the State” means the country.

Projet de loi 7

1987

**Loi portant mise en application de la Loi type
sur l'arbitrage commercial international adoptée
par la Commission des Nations Unies pour le droit
commercial international**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) La définition qui suit s'applique à la présente loi. Définition

«Code» La Loi type sur l'arbitrage commercial international adoptée par la Commission des Nations Unies pour le droit commercial international le 21 juin 1985 et dont le texte est reproduit à l'annexe. «Model Law»

(2) Sauf disposition contraire, les termes de la présente loi s'entendent au sens du Code. Idem

(3) À l'article 1 (1) du Code, l'expression «accord multilatéral ou bilatéral en vigueur pour le présent État» s'entend de l'accord multilatéral ou bilatéral auquel le Canada est partie et qui est en vigueur en Ontario. Définition de «présent État» dans le Code

(4) Aux articles 34 (2) b) (i) et 36 (1) b) (i) du Code, l'expression «la loi du présent État» s'entend des lois de l'Ontario ainsi que des lois du Canada qui sont en vigueur en Ontario. Idem

(5) À l'article 35 (2) du Code, l'expression «le présent État» s'entend du Canada. Idem

(6) Aux articles 1 (2) et (5), 27, 34 (2) b) (ii) et 36 (1) b) (ii) du Code, l'expression «le présent État» s'entend de l'Ontario. Idem

(7) À l'article 1 (3) du Code, l'expression «États différents» s'entend des pays différents, et le terme «l'État» s'entend du pays. Définition d'«États différents» dans le Code

Definition of
"competent
court" in
Model Law
Model Law
in force in
Ontario

(8) In the Model Law, a reference to "a competent court" means the Supreme or District Court.

Application

2.—(1) Subject to this Act, the Model Law is in force in Ontario.

(2) The Model Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Act.

Idem

(3) Despite article 1 (3) (c) of the Model Law, an arbitration conducted in Ontario between parties that all have their places of business in Ontario is not international only because the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Conciliation
and other
proceedings

3. For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, use mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure.

Removal of
arbitrator

4.—(1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the Model Law, any hearing held prior to the replacement or removal shall start afresh.

Idem

(2) The parties may remove an arbitrator or a substitute arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed.

Article 11 (1)
of Model
Law replaced

5. Article 11 (1) of the Model Law shall be deemed to read as follows:

(1) A person of any nationality may be an arbitrator.

Rules
applicable to
substance of
dispute

6. Despite article 28 (2) of the Model Law, if the parties fail to make a designation pursuant to article 28 (1) of the Model Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

Consolidation
of
proceedings

7.—(1) The Supreme or District Court, on the application of the parties to two or more arbitration proceedings, may order,

(a) the arbitration proceedings to be consolidated, on terms it considers just;

(8) La mention de «tribunal compétent» dans le Code s'entend de la Cour suprême ou de la Cour de district.

Définition de «tribunal compétent» dans le Code

2 (1) Sous réserve de la présente loi, le Code est en vigueur en Ontario.

Code en vigueur en Ontario

(2) Le Code s'applique aux conventions d'arbitrage commercial international conclues et aux sentences arbitrales rendues avant ou après l'entrée en vigueur de la présente loi.

Champ d'application

(3) Malgré l'article 1 (3) c) du Code, l'arbitrage qui a lieu en Ontario entre des parties qui toutes ont leur établissement en Ontario, n'est pas considéré comme international pour la seule raison que les parties sont convenues expressément que l'objet de la convention d'arbitrage a des liens avec plus d'un pays.

Idem

3 Pour faciliter le règlement d'un différend, le tribunal arbitral peut, à toute étape de la procédure arbitrale, avoir recours, avec l'accord des parties, à la médiation, à la conciliation ou à tout autre mode de règlement. Il peut également, avec leur accord, reprendre son rôle d'arbitre.

Conciliation et autres modes de règlement

4 (1) Toute procédure orale antérieure à un remplacement ou à une révocation d'arbitre conforme au Code est, sauf décision contraire des parties, à recommencer.

Révocation d'arbitre

(2) Les parties peuvent révoquer un arbitre ou un arbitre remplaçant n'importe quand avant la sentence définitive, indépendamment du mode de nomination de celui-ci.

Idem

5 L'article 11 (1) du Code est réputé rédigé comme suit :

L'article 11 (1) du Code est remplacé

(1) Une personne peut être nommée arbitre quelle que soit sa nationalité.

6 Malgré l'article 28 (2) du Code, à défaut par les parties de procéder à la désignation prévue à son article 28 (1), le tribunal arbitral applique les règles de droit qu'il estime indiquées compte tenu des circonstances de l'espèce.

Règles applicables au fond du différend

7 (1) La Cour suprême ou la Cour de district, sur demande des parties à plus d'une procédure arbitrale, peut ordonner :

Réunion de procédures

a) leur réunion, aux conditions qu'elle estime équitables;

- (b) the arbitration proceedings to be heard at the same time, or one immediately after another; or
- (c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

Appointment
of arbitral
tribunal

(2) Where the court orders arbitration proceedings to be consolidated pursuant to clause (1) (a) and the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the court shall appoint the arbitral tribunal chosen by the parties, but, if the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding.

Court order
not required
for consoli-
dation

(3) Nothing in this section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation.

Stay of
proceedings

8. Where, pursuant to article 8 of the Model Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

Interim
measures and
security

9. An order of the arbitral tribunal under article 17 of the Model Law for an interim measure of protection and the provision of security in connection with it is subject to the provisions of the Model Law as if it were an award.

Recognition
and
enforcement
of foreign
arbitral
awards

10. For the purposes of articles 35 and 36 of the Model Law, an arbitral award includes a commercial arbitral award made outside Canada, even if the arbitration to which it relates is not international as defined in article 1 (3) of the Model Law.

Enforcement

11.—(1) An arbitral award recognized by the court is enforceable in the same manner as a judgment or order of the court.

Idem

(2) An arbitral award recognized by the court binds the persons as between whom it was made and may be relied on by any of those persons in any legal proceeding.

Crown bound

12. This Act applies to an arbitration to which Her Majesty is a party.

Aids to
interpretation

13. For the purpose of interpreting the Model Law, recourse may be had, in addition to aids to interpretation ordinarily available under the law of Ontario, to,

- b) leur audition simultanée ou consécutive;
- c) le sursis de telle ou telle d'entre elles jusqu'à détermination de n'importe laquelle des autres.

(2) Dans les cas où la Cour ordonne la réunion prévue à l'alinéa (1) a) et où les parties à ces procédures sont d'accord sur le choix d'un tribunal arbitral, celui-ci est nommé par la Cour. À défaut d'accord des parties, elle peut nommer un tribunal arbitral pour ces procédures.

Nomination
du tribunal
arbitral

(3) Le présent article n'a pas pour effet d'empêcher les parties à plus d'une procédure arbitrale de s'entendre sur leur réunion et de prendre toutes mesures nécessaires à cette fin.

Réunion sans
ordonnance

8 Dans le cas où, en vertu de l'article 8 du Code, un tribunal renvoie les parties à l'arbitrage, il est sursis aux procédures devant ce tribunal qui sont liées aux questions se rapportant à l'arbitrage.

Sursis de
procédures

9 Est assujettie aux dispositions du Code comme s'il s'agissait d'une sentence, l'ordonnance du tribunal arbitral prévue à l'article 17 du Code qui porte sur les mesures provisoires ou conservatoires ainsi que le versement d'une provision approuvée.

Mesures
provisoires

10 Pour l'application des articles 35 et 36 du Code, une sentence arbitrale s'entend notamment d'une sentence arbitrale commerciale rendue à l'extérieur du Canada, même si l'arbitrage auquel elle est liée n'est pas international au sens de l'article 1 (3) du Code.

Reconnais-
sance et exé-
cution des
sentences
arbitrales
étrangères

11 (1) La sentence arbitrale reconnue par le tribunal est exécutoire comme s'il s'agissait d'un jugement ou d'une ordonnance rendus par le tribunal.

Exécution

(2) La sentence arbitrale reconnue par le tribunal lie les personnes à l'égard desquelles elle a été rendue. Ces personnes peuvent invoquer la sentence dans toute action en justice.

Idem

12 La présente loi s'applique à l'arbitrage auquel Sa Majesté est partie.

Couronne liée

13 Afin d'interpréter le Code, on peut avoir recours aux documents suivants :

Guide d'inter-
prétation

- (a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session (June 3-21, 1985); and
- (b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law,

as published in The Canada Gazette, Part I, Vol. 120, No. 40, October 4, 1986, Supplement.

Repeal

14. The *Foreign Arbitral Awards Act, 1986*, being chapter 25, is repealed.

Commence-
ment

15. This Act comes into force on the day it receives Royal Assent.

Short title

16. The short title of this Act is the *International Commercial Arbitration Act, 1988*.

- a) le Rapport de la Commission des Nations Unies pour le droit commercial international sur les travaux de sa dix-huitième session, du 3 au 21 juin 1985;
- b) le commentaire analytique figurant dans le rapport du Secrétaire général à la dix-huitième session de la Commission des Nations Unies pour le droit commercial international,

tels qu'ils sont publiés dans La Gazette du Canada, Partie I, Vol. 120, n° 40, le 4 octobre 1986, Supplément. Ces documents s'ajoutent aux guides d'interprétation auxquels on a recours habituellement en vertu de la loi de l'Ontario.

14 La *Loi de 1986 sur les sentences arbitrales étrangères*, Abrogation
qui constitue le chapitre 25, est abrogée.

15 La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en
vigueur

16 Le titre abrégé de la présente loi est *Loi de 1988 sur l'arbitrage commercial international*. Titre abrégé

SCHEDULE

UNCITRAL MODEL LAW ON INTERNATIONAL
COMMERCIAL ARBITRATION

(As adopted by the United Nations
Commission on International Trade Law on
21 June, 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. *Scope of application*

- (1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.
- (2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (3) An arbitration is international if:
- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
 - (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement,
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. *Definitions and rules of interpretation*

For the purposes of this Law:

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

ANNEXE

LOI TYPE DE LA CNUDCI SUR L'ARBITRAGE COMMERCIAL
INTERNATIONAL

(telle qu'adoptée par la Commission des Nations Unies
pour le droit commercial international le 21 juin 1985)

CHAPITRE PREMIER. DISPOSITIONS GÉNÉRALES

Article premier *Champ d'application*

(1) La présente loi s'applique à l'arbitrage commercial international; elle ne porte atteinte à aucun accord multilatéral ou bilatéral en vigueur pour le présent État.

(2) Les dispositions de la présente loi, à l'exception des articles 8, 9, 35 et 36, ne s'appliquent que si le lieu de l'arbitrage est situé sur le territoire du présent État.

(3) Un arbitrage est international si :

a) les parties à une convention d'arbitrage ont, au moment de la conclusion de ladite convention, leur établissement dans des États différents; ou

b) un des lieux ci-après est situé hors de l'État dans lequel les parties ont leur établissement :

(i) le lieu de l'arbitrage, s'il est stipulé dans la convention d'arbitrage ou déterminé en vertu de cette convention,

(ii) tout lieu où doit être exécutée une partie substantielle des obligations issues de la relation commerciale ou le lieu avec lequel l'objet du différend a le lien le plus étroit; ou

c) les parties sont convenues expressément que l'objet de la convention d'arbitrage a des liens avec plus d'un pays.

(4) Aux fins du paragraphe (3) du présent article :

a) si une partie a plus d'un établissement, l'établissement à prendre en considération est celui qui a la relation la plus étroite avec la convention d'arbitrage;

b) si une partie n'a pas d'établissement, sa résidence habituelle en tient lieu.

(5) La présente loi ne porte atteinte à aucune autre loi du présent État en vertu de laquelle certains différends ne peuvent être soumis à l'arbitrage ou ne peuvent l'être qu'en application de dispositions autres que celles de la présente loi.

Article 2 *Définitions et règles d'interprétation*

Aux fins de la présente loi :

a) le terme «arbitrage» désigne tout arbitrage que l'organisation en soit ou non confiée à une institution permanente d'arbitrage;

b) l'expression «tribunal arbitral» désigne un arbitre unique ou un groupe d'arbitres;

- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. *Receipt of written communications*

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

Article 4. *Waiver of right to object*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. *Extent of court intervention*

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. *Court or other authority for certain functions of arbitration assistance and supervision*

The functions referred to in articles 11 (3), 11 (4), 13 (3), 14, 16 (3) and 34 (2) shall be performed by the Supreme or District Court.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. *Definition and form of arbitration agreement*

- (1) “Arbitration agreement” is an agreement by the parties to submit to

- c) le terme «tribunal» désigne un organisme ou organe du système judiciaire d'un État;
- d) lorsqu'une disposition de la présente loi, à l'exception de l'article 28, laisse aux parties la liberté de décider d'une certaine question, cette liberté emporte le droit pour les parties d'autoriser un tiers, y compris une institution, à décider de cette question;
- e) lorsqu'une disposition de la présente loi se réfère au fait que les parties sont convenues ou peuvent convenir d'une question, ou se réfère de toute autre manière à une convention des parties, une telle convention englobe tout règlement d'arbitrage qui y est mentionné;
- f) lorsqu'une disposition de la présente loi, autre que celles de l'alinéa a) de l'article 25 et de l'alinéa (2) a) de l'article 32, se réfère à une demande, cette disposition s'applique également à une demande reconventionnelle et lorsqu'elle se réfère à des conclusions en défense, elle s'applique également à des conclusions en défense sur une demande reconventionnelle.

Article 3 *Réception de communications écrites*

(1) Sauf convention contraire des parties :

- a) toute communication écrite est réputée avoir été reçue si elle a été remise soit à la personne du destinataire, soit à son établissement, à sa résidence habituelle ou à son adresse postale; si aucun de ces lieux n'a pu être trouvé après une enquête raisonnable, une communication écrite est réputée avoir été reçue si elle a été envoyée au dernier établissement, à la dernière résidence habituelle ou à la dernière adresse postale connus du destinataire par lettre recommandée ou tout autre moyen attestant la tentative de remise;
- b) la communication est réputée avoir été reçue le jour d'une telle remise.

(2) Les dispositions du présent article ne s'appliquent pas aux communications échangées dans le cadre de procédures judiciaires.

Article 4 *Renonciation au droit de faire objection*

Est réputée avoir renoncé à son droit de faire objection toute partie qui, bien qu'elle sache que l'une des dispositions de la présente loi auxquelles les parties peuvent déroger, ou toute condition énoncée dans la convention d'arbitrage, n'a pas été respectée, poursuit néanmoins l'arbitrage sans formuler d'objection promptement ou, s'il est prévu un délai à cet effet, dans ledit délai.

Article 5 *Domaine de l'intervention des tribunaux*

Pour toutes les questions régies par la présente loi, les tribunaux ne peuvent intervenir que dans les cas où celle-ci le prévoit.

Article 6 *Tribunal ou autre autorité chargé de certaines fonctions d'assistance et de contrôle dans le cadre de l'arbitrage*

Les fonctions mentionnées aux articles 11 (3), 11 (4), 13 (3), 14, 16 (3) et 34 (2) sont confiées à la Cour suprême ou à la Cour de district.

CHAPITRE II. CONVENTION D'ARBITRAGE

Article 7 *Définition et forme de la convention d'arbitrage*

(1) Une «convention d'arbitrage» est une convention par laquelle les parties

arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. *Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. *Arbitration agreement and interim measures by court*

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. *Number of arbitrators*

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. *Appointment of arbitrators*

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

décident de soumettre à l'arbitrage, tous les différends ou certains des différends qui se sont élevés ou pourraient s'élever entre elles au sujet d'un rapport de droit déterminé, contractuel ou non contractuel. Une convention d'arbitrage peut prendre la forme d'une clause compromissoire dans un contrat ou d'une convention séparée.

(2) La convention d'arbitrage doit se présenter sous forme écrite. Une convention est sous forme écrite si elle est consignée dans un document signé par les parties ou dans un échange de lettres, de communications télex, de télégrammes ou de tout autre moyen de télécommunications qui en atteste l'existence, ou encore dans l'échange d'une conclusion en demande et d'une conclusion en réponse dans lequel l'existence d'une telle convention est alléguée par une partie et n'est pas contestée par l'autre. La référence dans un contrat à un document contenant une clause compromissoire vaut convention d'arbitrage, à condition que ledit contrat soit sous forme écrite et que la référence soit telle qu'elle fasse de la clause une partie du contrat.

Article 8 *Convention d'arbitrage et actions intentées quant au fond devant un tribunal*

(1) Le tribunal saisi d'un différend sur une question faisant l'objet d'une convention d'arbitrage renverra les parties à l'arbitrage si l'une d'entre elles le demande au plus tard lorsqu'elle soumet ses premières conclusions quant au fond du différend, à moins qu'il ne constate que ladite convention est caduque, inopérante ou non susceptible d'être exécutée.

(2) Lorsque le tribunal est saisi d'une action visée au paragraphe (1) du présent article, la procédure arbitrale peut néanmoins être engagée ou poursuivie et une sentence peut être rendue en attendant que le tribunal ait statué.

Article 9 *Convention d'arbitrage et mesures provisoires prises par un tribunal*

La demande par une partie à un tribunal, avant ou pendant la procédure arbitrale, de mesures provisoires ou conservatoires et l'octroi de telles mesures par un tribunal ne sont pas incompatibles avec une convention d'arbitrage.

CHAPITRE III. COMPOSITION DU TRIBUNAL ARBITRAL

Article 10 *Nombre d'arbitres*

(1) Les parties sont libres de convenir du nombre d'arbitres.

(2) Faute d'une telle convention, il est nommé trois arbitres.

Article 11 *Nomination de l'arbitre ou des arbitres*

(1) Nul ne peut, en raison de sa nationalité, être empêché d'exercer des fonctions d'arbitre, sauf convention contraire des parties.

(2) Les parties sont libres de convenir de la procédure de nomination de l'arbitre ou des arbitres, sans préjudice des dispositions des paragraphes (4) et (5) du présent article.

(3) Faute d'une telle convention :

- a) en cas d'arbitrage par trois arbitres, chaque partie nomme un arbitre et les deux autres arbitres ainsi nommés choisissent le troisième arbitre; si une partie ne nomme pas un arbitre dans un délai de trente jours à compter de la réception d'une demande à cette fin émanant

- (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties:
 - (a) a party fails to act as required under such procedure; or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. *Grounds for challenge*

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. *Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

de l'autre partie, ou si les deux arbitres ne s'accordent pas sur le choix du troisième arbitre dans un délai de trente jours à compter de leur désignation, la nomination est effectuée, sur la demande d'une partie, par le tribunal ou autre autorité visé à l'article 6;

- b) en cas d'arbitrage par un arbitre unique, si les parties ne peuvent s'accorder sur le choix de l'arbitre, celui-ci est nommé, sur la demande d'une partie, par le tribunal ou autre autorité visé à l'article 6. –

(4) Lorsque, durant une procédure de nomination convenue par les parties :

- a) une partie n'agit pas conformément à ladite procédure; ou
- b) les parties, ou deux arbitres, ne peuvent parvenir à un accord conformément à ladite procédure; ou
- c) un tiers, y compris une institution, ne s'acquitte pas d'une fonction qui lui est conférée dans ladite procédure,

l'une ou l'autre partie peut prier le tribunal ou autre autorité visé à l'article 6 de prendre la mesure voulue, à moins que la convention relative à la procédure de nomination ne stipule d'autres moyens d'assurer cette nomination.

(5) La décision sur une question confiée au tribunal ou autre autorité visé à l'article 6, conformément aux paragraphes (3) et (4) du présent article, n'est pas susceptible de recours. Lorsqu'il nomme un arbitre, le tribunal tient compte de toutes les qualifications requises de l'arbitre par convention des parties et de toutes considérations propres à garantir la nomination d'un arbitre indépendant et impartial et, lorsqu'il nomme un arbitre unique ou un troisième arbitre, il tient également compte du fait qu'il peut être souhaitable de nommer un arbitre d'une nationalité différente de celle des parties.

Article 12 *Motifs de récusation*

(1) Lorsqu'une personne est pressentie en vue de sa nomination éventuelle en qualité d'arbitre, elle signale toutes circonstances de nature à soulever des doutes légitimes sur son impartialité ou sur son indépendance. À partir de la date de sa nomination et durant toute la procédure arbitrale, l'arbitre signale sans tarder de telles circonstances aux parties, à moins qu'il ne l'ait déjà fait.

(2) Un arbitre ne peut être récusé que s'il existe des circonstances de nature à soulever des doutes légitimes sur son impartialité ou son indépendance, ou si celui-ci ne possède pas les qualifications convenues par les parties. Une partie ne peut récuser l'arbitre qu'elle a nommé ou à la nomination duquel elle a participé que pour une cause dont elle a eu connaissance après cette nomination.

Article 13 *Procédure de récusation*

(1) Sous réserve des dispositions du paragraphe (3) du présent article, les parties sont libres de convenir de la procédure de récusation de l'arbitre.

(2) Faute d'un tel accord, la partie qui a l'intention de récuser un arbitre expose par écrit les motifs de la récusation au tribunal arbitral, dans un délai de quinze jours à compter de la date à laquelle elle a eu connaissance de la constitution du tribunal arbitral ou de la date à laquelle elle a eu connaissance des circonstances visées à l'article 12 (2). Si l'arbitre récusé ne se déporte pas ou que l'autre partie n'accepte pas la récusation, le tribunal arbitral se prononce sur la récusation.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. *Failure or impossibility to act*

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. *Appointment of substitute arbitrator*

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. *Competence of arbitral tribunal to rule on its jurisdiction*

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

(3) Si la récusation ne peut être obtenue selon la procédure convenue par les parties ou en application du paragraphe (2) du présent article, la partie récusante peut, dans un délai de trente jours après avoir eu communication de la décision rejetant la récusation, prier le tribunal ou autre autorité visé à l'article 6 de prendre sur la récusation une décision qui ne sera pas susceptible de recours; dans l'attente de cette décision, le tribunal arbitral y compris l'arbitre récusé, peut poursuivre la procédure arbitrale et rendre une sentence.

Article 14 *Carence ou incapacité d'un arbitre*

(1) Lorsqu'un arbitre se trouve dans l'impossibilité de droit ou de fait de remplir sa mission ou, pour d'autres raisons, ne s'acquitte pas de ses fonctions dans un délai raisonnable, son mandat prend fin s'il se déporte ou si les parties conviennent d'y mettre fin. Au cas où il subsiste un désaccord quant à l'un quelconque de ces motifs, l'une ou l'autre partie peut prier le tribunal ou autre autorité visé à l'article 6 de prendre une décision, qui ne sera pas susceptible de recours, sur la cessation du mandat.

(2) Le fait qu'en application du présent article ou de l'article 13 (2), un arbitre se déporte ou qu'une partie accepte que le mandat d'un arbitre prenne fin n'implique pas reconnaissance des motifs mentionnés à l'article 12 (2) ou dans le présent article.

Article 15 *Nomination d'un arbitre remplaçant*

Lorsqu'il est mis fin au mandat d'un arbitre conformément à l'article 13 ou 14, ou lorsque celui-ci se déporte pour toute autre raison, ou lorsque son mandat est révoqué par accord des parties ou dans tout autre cas où il est mis fin à son mandat, un arbitre remplaçant est nommé conformément aux règles qui étaient applicables à la nomination de l'arbitre remplacé.

CHAPITRE IV. COMPÉTENCE DU TRIBUNAL ARBITRAL

Article 16 *Compétence du tribunal arbitral pour statuer sur sa propre compétence*

(1) Le tribunal arbitral peut statuer sur sa propre compétence, y compris sur toute exception relative à l'existence ou à la validité de la convention d'arbitrage. À cette fin, une clause compromissoire faisant partie d'un contrat est considérée comme une convention distincte des autres clauses du contrat. La constatation de nullité du contrat par le tribunal arbitral n'entraîne pas de plein droit la nullité de la clause compromissoire.

(2) L'exception d'incompétence du tribunal arbitral peut être soulevée au plus tard lors du dépôt des conclusions en défense. Le fait pour une partie d'avoir désigné un arbitre ou d'avoir participé à sa désignation ne la prive pas du droit de soulever cette exception. L'exception prise de ce que la question litigieuse excéderait les pouvoirs du tribunal arbitral est soulevée dès que la question alléguée comme excédant ses pouvoirs est soulevée pendant la procédure arbitrale. Le tribunal arbitral peut, dans l'un ou l'autre cas, admettre une exception soulevée après le délai prévu, s'il estime que le retard est dû à une cause valable.

(3) Le tribunal arbitral peut statuer sur l'exception visée au paragraphe (2) du présent article soit en la traitant comme une question préalable, soit dans sa sentence sur le fond. Si le tribunal arbitral détermine, à titre de question préalable, qu'il est compétent, l'une ou l'autre partie peut, dans un délai de trente jours après avoir été avisée de cette décision, demander au tribunal visé à l'article 6 de rendre une décision sur ce point, laquelle ne sera pas susceptible de recours; en attendant qu'il soit statué sur cette demande, le tribunal arbitral est libre de poursuivre la procédure arbitrale et de rendre une sentence.

Article 17. *Power of arbitral tribunal to order interim measures*

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS**Article 18.** *Equal treatment of parties*

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. *Determination of rules of procedure*

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. *Place of arbitration*

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. *Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. *Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 17 *Pouvoir du tribunal arbitral d'ordonner des mesures provisoires*

Sauf convention contraire des parties, le tribunal arbitral peut, à la demande d'une partie, ordonner à toute partie de prendre toute mesure provisoire ou conservatoire qu'il juge nécessaire en ce qui concerne l'objet du différend. Le tribunal arbitral peut, à ce titre, exiger de toute partie le versement d'une provision appropriée.

CHAPITRE V. CONDUITE DE LA PROCÉDURE ARBITRALE**Article 18** *Égalité de traitement des parties*

Les parties doivent être traitées sur un pied d'égalité et chaque partie doit avoir toute possibilité de faire valoir ses droits.

Article 19 *Détermination des règles de procédure*

(1) Sous réserve des dispositions de la présente loi, les parties sont libres de convenir de la procédure à suivre par le tribunal arbitral.

(2) Faute d'une telle convention, le tribunal arbitral peut, sous réserve des dispositions de la présente loi, procéder à l'arbitrage comme il le juge approprié. Les pouvoirs conférés au tribunal arbitral comprennent celui de juger de la recevabilité, de la pertinence et de l'importance de toute preuve produite.

Article 20 *Lieu de l'arbitrage*

(1) Les parties sont libres de décider du lieu de l'arbitrage. Faute d'une telle décision, ce lieu est fixé par le tribunal arbitral, compte tenu des circonstances de l'affaire, y compris les convenances des parties.

(2) Nonobstant les dispositions du paragraphe (1) du présent article, le tribunal arbitral peut, sauf convention contraire des parties, se réunir en tout lieu qu'il jugera approprié pour l'organisation de consultations entre ses membres, l'audition des témoins, des experts ou des parties, ou pour l'inspection de marchandises, d'autres biens ou de pièces.

Article 21 *Début de la procédure arbitrale*

Sauf convention contraire des parties, la procédure arbitrale concernant un différend déterminé débute à la date à laquelle la demande de soumission de ce différend à l'arbitrage est reçue par le défendeur.

Article 22 *Langue*

(1) Les parties sont libres de convenir de la langue ou des langues à utiliser dans la procédure arbitrale. Faute d'un tel accord, le tribunal arbitral décide de la langue ou des langues à utiliser dans la procédure. Cet accord ou cette décision, à moins qu'il n'en soit convenu ou décidé autrement, s'applique à toute déclaration écrite d'une partie, à toute procédure orale et à toute sentence, décision ou autre communication du tribunal arbitral.

(2) Le tribunal arbitral peut ordonner que toute pièce soit accompagnée d'une traduction dans la langue ou les langues convenues par les parties ou choisies par le tribunal arbitral.

Article 23. *Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. *Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. *Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. *Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, the arbitral tribunal,

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

Article 23 *Conclusions en demande et en défense*

(1) Dans le délai convenu par les parties ou fixé par le tribunal arbitral, le demandeur énonce les faits au soutien de sa demande, les points litigieux et l'objet de la demande et le défendeur énonce ses défenses à propos de ces questions, à moins que les parties ne soient autrement convenues des indications devant figurer dans les conclusions. Les parties peuvent accompagner leurs conclusions de toutes pièces qu'elles jugeront pertinentes ou y mentionner les pièces ou autres moyens de preuve qu'elles produiront.

(2) Sauf convention contraire des parties, l'une ou l'autre partie peut modifier ou compléter sa demande ou ses défenses, au cours de la procédure arbitrale, à moins que le tribunal arbitral considère ne pas devoir autoriser un tel amendement en raison du retard avec lequel il est formulé.

Article 24 *Procédure orale et procédure écrite*

(1) Sauf convention contraire des parties, le tribunal arbitral décide si la procédure doit comporter des phases orales pour la production de preuves ou pour l'exposé oral des arguments, ou si elle se déroulera sur pièces. Cependant, à moins que les parties n'aient convenu qu'il n'y aura pas de procédure orale, le tribunal arbitral organise une telle procédure à un stade approprié de la procédure arbitrale, si une partie lui en fait la demande.

(2) Les parties recevront suffisamment longtemps à l'avance notification de toutes audiences et de toutes réunions du tribunal arbitral tenues aux fins de l'inspection de marchandises, d'autres biens ou de pièces.

(3) Toutes les conclusions, pièces ou informations que l'une des parties fournit au tribunal arbitral doivent être communiquées à l'autre partie. Tout rapport d'expert ou document présenté en tant que preuve sur lequel le tribunal pourrait s'appuyer pour statuer doit également être communiqué aux parties.

Article 25 *Défaut d'une partie*

Sauf convention contraire des parties, si, sans invoquer d'empêchement légitime :

- a) le demandeur ne présente pas sa demande conformément à l'article 23 (1), le tribunal arbitral met fin à la procédure arbitrale;
- b) le défendeur ne présente pas ses défenses conformément à l'article 23 (1), le tribunal arbitral poursuit la procédure arbitrale sans considérer ce défaut en soi comme une acceptation des allégations du demandeur;
- c) l'une des parties omet de comparaître à l'audience ou de produire des documents, le tribunal arbitral peut poursuivre la procédure et statuer sur la base des éléments de preuve dont il dispose.

Article 26 *Expert nommé par le tribunal arbitral*

(1) Sauf convention contraire des parties, le tribunal arbitral :

- a) peut nommer un ou plusieurs experts chargés de lui faire rapport sur les points précis qu'il déterminera;
- b) peut demander à une partie de fournir à l'expert tous renseignements appropriés ou de lui soumettre ou de lui rendre accessibles, aux fins d'examen, toutes pièces ou toutes marchandises ou autres biens pertinents.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. *Court assistance in taking evidence*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. *Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. *Decision making by panel of arbitrators*

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. *Settlement*

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. *Form and contents of award*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) Sauf convention contraire des parties, si une partie en fait la demande ou si le tribunal arbitral le juge nécessaire, l'expert, après présentation de son rapport écrit ou oral, participe à une audience à laquelle les parties peuvent l'interroger et faire venir en qualité de témoins des experts qui déposent sur les questions litigieuses.

Article 27 *Assistance des tribunaux pour l'obtention de preuves*

Le tribunal arbitral, ou une partie avec l'approbation du tribunal arbitral, peut demander à un tribunal compétent du présent État une assistance pour l'obtention de preuves. Le tribunal peut satisfaire à cette demande, dans les limites de sa compétence et conformément aux règles relatives à l'obtention de preuves.

CHAPITRE VI. PRONONCÉ DE LA SENTENCE ET CLÔTURE DE
LA PROCÉDURE

Article 28 *Règles applicables au fond du différend*

(1) Le tribunal arbitral tranche le différend conformément aux règles de droit choisies par les parties comme étant applicables au fond du différend. Toute désignation de la loi ou du système juridique d'un État donné est considérée, sauf indication contraire expresse, comme désignant directement les règles juridiques de fond de cet État et non ses règles de conflit de lois.

(2) À défaut d'une telle désignation par les parties, le tribunal arbitral applique la loi désignée par la règle de conflit de lois qu'il juge applicable en l'espèce.

(3) Le tribunal arbitral statue *ex aequo et bono* ou en qualité d'amiable compositeur uniquement si les parties l'y ont expressément autorisé.

(4) Dans tous les cas, le tribunal arbitral décide conformément aux stipulations du contrat et tient compte des usages du commerce applicables à la transaction.

Article 29 *Prise de décisions par plusieurs arbitres*

Dans une procédure arbitrale comportant plus d'un arbitre, toute décision du tribunal arbitral est, sauf convention contraire des parties, prise à la majorité de tous ses membres. Toutefois, les questions de procédure peuvent être tranchées par un arbitre-président, si ce dernier y est autorisé par les parties ou par tous les membres du tribunal arbitral.

Article 30 *Règlement par accord des parties*

(1) Si, durant la procédure arbitrale, les parties s'entendent pour régler le différend, le tribunal arbitral met fin à la procédure arbitrale et, si les parties lui en font la demande et s'il n'y voit pas d'objection, constate le fait par une sentence arbitrale rendue par accord des parties.

(2) La sentence d'accord des parties est rendue conformément aux dispositions de l'article 31 et mentionne le fait qu'il s'agit d'une sentence. Une telle sentence a le même statut et le même effet que toute autre sentence prononcée sur le fond de l'affaire.

Article 31 *Forme et contenu de la sentence*

(1) La sentence est rendue par écrit et signée par l'arbitre ou les arbitres. Dans la procédure arbitrale comprenant plusieurs arbitres, les signatures de la majorité des membres du tribunal arbitral suffisent, pourvu que soit mentionnée la raison de l'omission des autres.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. *Termination of proceedings*

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. *Correction and interpretation of award: additional award*

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) (a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(2) La sentence est motivée, sauf si les parties sont convenues que tel ne doit pas être le cas ou s'il s'agit d'une sentence rendue par accord des parties conformément à l'article 30.

(3) La sentence mentionne la date à laquelle elle est rendue, ainsi que le lieu de l'arbitrage déterminé conformément à l'article 20 (1). La sentence est réputée avoir été rendue audit lieu.

(4) Après le prononcé de la sentence, une copie signée par l'arbitre ou les arbitres conformément au paragraphe (1) du présent article en est remise à chacune des parties.

Article 32 *Clôture de la procédure*

(1) La procédure arbitrale est close par le prononcé de la sentence définitive ou par une ordonnance de clôture rendue par le tribunal arbitral conformément au paragraphe (2) du présent article.

(2) Le tribunal arbitral ordonne la clôture de la procédure arbitrale lorsque :

- a) le demandeur retire sa demande, à moins que le défendeur y fasse objection et que le tribunal arbitral reconnaisse qu'il a légitimement intérêt à ce que le différend soit définitivement réglé;
- b) les parties conviennent de clore la procédure;
- c) le tribunal arbitral constate que la poursuite de la procédure est, pour toute autre raison, devenue superflue ou impossible.

(3) Le mandat du tribunal arbitral prend fin avec la clôture de la procédure arbitrale, sous réserve des dispositions de l'article 33 et du paragraphe (4) de l'article 34.

Article 33 *Rectification et interprétation de la sentence et sentence additionnelle*

(1) Dans les trente jours qui suivent la réception de la sentence, à moins que les parties ne soient convenues d'un autre délai :

- a) une des parties peut, moyennant notification à l'autre, demander au tribunal arbitral de rectifier dans le texte de la sentence toute erreur de calcul, toute erreur matérielle ou typographique ou toute erreur de même nature;
- b) si les parties en sont convenues, une partie peut, moyennant notification à l'autre, demander au tribunal arbitral de donner une interprétation d'un point ou passage précis de la sentence.

Si le tribunal arbitral considère que la demande est justifiée, il fait la rectification ou donne l'interprétation dans les trente jours qui suivent la réception de la demande. L'interprétation fait partie intégrante de la sentence.

(2) Le tribunal arbitral peut, de son propre chef, rectifier toute erreur du type visé à l'alinéa a) du paragraphe (1) du présent article dans les trente jours qui suivent la date de la sentence.

(3) Sauf convention contraire des parties, l'une des parties peut, moyennant notification à l'autre, demander au tribunal arbitral, dans les trente jours qui suivent la réception de la sentence, de rendre une sentence additionnelle sur des chefs de demande exposés au cours de la procédure arbitrale mais omis dans la sentence. S'il juge la demande justifiée, le tribunal arbitral complète sa sentence dans les soixante jours.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. *Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State, or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside, or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or
- (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) Le tribunal arbitral peut prolonger, si besoin est, le délai dont il dispose pour rectifier, interpréter ou compléter la sentence en vertu du paragraphe (1) ou (3) du présent article.

(5) Les dispositions de l'article 31 s'appliquent à la rectification ou l'interprétation de la sentence ou à la sentence additionnelle.

CHAPITRE VII. RECOURS CONTRE LA SENTENCE

Article 34 *La demande d'annulation comme recours exclusif contre la sentence arbitrale*

(1) Le recours formé devant un tribunal contre une sentence arbitrale ne peut prendre la forme que d'une demande d'annulation conformément aux paragraphes (2) et (3) du présent article.

(2) La sentence arbitrale ne peut être annulée par le tribunal visé à l'article 6 que si :

a) la partie en faisant la demande apporte la preuve :

- (i) qu'une partie à la convention d'arbitrage visée à l'article 7 était frappée d'une incapacité; ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du présent État, ou
- (ii) qu'elle n'a pas été dûment informée de la nomination d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses droits, ou
- (iii) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire, étant entendu toutefois que, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, seule la partie de la sentence contenant des décisions sur les questions non soumises à l'arbitrage pourra être annulé, ou
- (iv) que la constitution du tribunal arbitral, ou la procédure arbitrale, n'a pas été conforme à la convention des parties, à condition que cette convention ne soit pas contraire à une disposition de la présente loi à laquelle les parties ne peuvent déroger, ou, à défaut d'une telle convention, qu'elle n'a pas été conforme à la présente loi; ou

b) le tribunal constate :

- (i) que l'objet du différend n'est pas susceptible d'être réglé par arbitrage conformément à la loi du présent État, ou
- (ii) que la sentence est contraire à l'ordre public du présent État.

(3) Une demande d'annulation ne peut être présentée après l'expiration d'un délai de trois mois à compter de la date à laquelle la partie présentant cette demande a reçu communication de la sentence ou, si une demande a été faite en vertu de l'article 33, à compter de la date à laquelle le tribunal arbitral a pris une décision sur cette demande.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

- (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place, or
 - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(4) Lorsqu'il est prié d'annuler une sentence, le tribunal peut, le cas échéant et à la demande d'une partie, suspendre la procédure d'annulation pendant une période dont il fixe la durée afin de donner au tribunal arbitral la possibilité de reprendre la procédure arbitrale ou de prendre toute autre mesure que ce dernier juge susceptible d'éliminer les motifs d'annulation.

CHAPITRE VIII. RECONNAISSANCE ET EXÉCUTION DES SENTENCES

Article 35 *Reconnaissance et exécution*

(1) La sentence arbitrale, quel que soit le pays où elle a été rendue, est reconnue comme ayant force obligatoire et, sur requête adressée par écrit au tribunal compétent, est exécutée sous réserve des dispositions du présent article et de l'article 36.

(2) La partie qui invoque la sentence ou qui en demande l'exécution doit en fournir l'original dûment authentifié ou une copie certifiée conforme, ainsi que l'original de la convention d'arbitrage mentionnée à l'article 7 ou une copie certifiée conforme. Si ladite sentence ou ladite convention n'est pas rédigée dans une langue officielle du présent État, la partie en produira une traduction dûment certifiée dans cette langue.

Article 36 *Motifs de refus de la reconnaissance ou de l'exécution*

(1) La reconnaissance ou l'exécution d'une sentence arbitrale, quel que soit le pays où elle a été rendue, ne peut être refusée que :

- a) sur la demande de la partie contre laquelle elle est invoquée, si ladite partie présente au tribunal compétent auquel est demandée la reconnaissance ou l'exécution la preuve :
 - (i) qu'une partie à la convention d'arbitrage visée à l'article 7 était frappée d'une incapacité; ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du pays où la sentence a été rendue, ou
 - (ii) que la partie contre laquelle la sentence est invoquée n'a pas été dûment informée de la désignation d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses droits, ou
 - (iii) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire, étant entendu toutefois que, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, seule la partie de la sentence contenant des décisions sur les questions soumises à l'arbitrage pourra être reconnue et exécutée, ou
 - (iv) que la constitution du tribunal arbitral, ou la procédure arbitrale, n'a pas été conforme à la convention des parties ou, à défaut d'une telle convention, à la loi du pays où l'arbitrage a eu lieu, ou
 - (v) que la sentence n'est pas encore devenue obligatoire pour les parties ou a été annulée ou suspendue par un tribunal du pays dans lequel, ou en vertu de la loi duquel elle a été rendue; ou

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

b) si le tribunal constate que :

(i) l'objet du différend n'est pas susceptible d'être réglé par arbitrage conformément à la loi du présent État, ou que

(ii) la reconnaissance ou l'exécution de la sentence serait contraire à l'ordre public du présent État.

(2) Si une demande d'annulation ou de suspension d'une sentence a été présentée à un tribunal visé au sous-alinéa (1) a) (v) du présent article, le tribunal auquel est demandée la reconnaissance ou l'exécution peut, s'il le juge approprié, surseoir à statuer et peut aussi, à la requête de la partie demandant la reconnaissance ou l'exécution de la sentence, ordonner à l'autre partie de fournir des sûretés convenables.

Bill 8

An Act to amend the Representation Act, 1986

Mr. Villeneuve



1st Reading November 5th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Self-explanatory.

Bill 8**1987****An Act to amend the Representation Act, 1986**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Schedule to the *Representation Act, 1986*, being chapter 30, is amended by renaming "THE ELECTORAL DISTRICT OF STORMONT, DUNDAS AND GLENGARRY" as "THE ELECTORAL DISTRICT OF S-D-G & EAST GRENVILLE".

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Representation Amendment Act, 1987*. Short title

Bill 9

**An Act permitting
Trustees
and other Persons
to dispose of
South African investments**

The Hon. I. Scott
Attorney General

1st Reading November 5th, 1987
2nd Reading
3rd Reading
Royal Assent

Projet de loi 9

**Loi permettant
aux fiduciaires
et à d'autres personnes
d'aliéner
les placements sud-africains**

L'honorable I. Scott
procureur général

1^{re} lecture 5 novembre 1987
2^e lecture
3^e lecture
sanction royale

EXPLANATORY NOTES

The purpose of the Bill is to authorize trustees of trusts and persons responsible for managing and investing the assets of registered charities and pension funds to dispose of South African investments without committing a breach of duty even if the value of the property they manage decreases as a result. (Under the present law, these persons have a duty to invest the property they manage in reasonable and proper investments without consideration of moral issues).

The Bill provides that a trustee of a trust or person responsible for managing and investing the assets of a registered charity or pension fund who disposes of a South African investment, acting in a reasonably prudent manner, does not commit a breach of duty even if as a result the value of the property decreases.

However, trustees and persons responsible for pension funds are required, before they dispose of a South African investment, to obtain the consent of a majority of the identifiable beneficiaries (if there are no more than 100 identifiable beneficiaries) or to satisfy themselves that a majority of the identifiable beneficiaries would consent (if there are more than 100).

“South African investment” is defined in subsection 1 (1).

NOTES EXPLICATIVES

Le projet de loi permettrait aux fiduciaires de fiducies et aux personnes chargées de la gestion et du placement de biens appartenant aux organismes de charité enregistrés et aux caisses de retraite d'aliéner des placements sud-africains sans manquer à leur devoir, même si la valeur des biens qu'ils gèrent diminue en raison de cette aliénation. (La loi existante impose à ces personnes le devoir d'investir les biens qu'ils gèrent dans des placements raisonnables et appropriés, sans égard aux questions d'ordre moral).

Le projet de loi prévoit que le fiduciaire d'une fiducie ou la personne responsable de la gestion et du placement des biens d'un organisme de charité enregistré ou d'une caisse de retraite qui aliène un placement sud-africain en faisant preuve d'une prudence normale ne manque pas à son devoir même si la valeur des biens diminue en raison de cette aliénation.

Avant d'aliéner un placement sud-africain, il incombe cependant aux fiduciaires et aux personnes responsables des caisses de retraite d'obtenir le consentement d'une majorité des bénéficiaires identifiables (si leur nombre ne dépasse pas 100) ou de s'assurer qu'une majorité d'entre eux donneraient leur consentement (si leur nombre est supérieur à 100).

L'expression «placement sud-africain» est définie au paragraphe 1 (1).

Bill 9**1987**

**An Act permitting
Trustees and other Persons
to dispose of South African Investments**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“organisme
de charité
enregistré”
R.S.C. 1952,
c. 148

“registered charity” means a registered charity within the meaning of paragraph 110 (8) (c) of the *Income Tax Act* (Canada);

“Afrique du
Sud”

“South Africa” means the Republic of South Africa;

“placement
sud-africain”

“South African investment” means,

- (a) an investment in shares of a corporation that is incorporated under the laws of South Africa or carries on business in South Africa,
- (b) an investment in shares of a corporation that has a substantial interest in a corporation that is incorporated under the laws of South Africa or carries on business in South Africa,
- (c) an investment in shares of a corporation a substantial interest in which is held by one or more of the following,
 - (i) corporations that are incorporated under the laws of South Africa,
 - (ii) corporations that carry on business in South Africa,

Projet de loi 9

1987

**Loi permettant
aux fiduciaires et à d'autres personnes
d'aliéner les placements sud-africains**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

«action assortie du droit de vote» Action d'une catégorie de actions d'une compagnie assortie d'un droit de vote absolu ou assortie d'un droit de vote en raison de la survenance d'une éventualité qui s'est produite et se poursuit. «voting share»

«Afrique du Sud» La République d'Afrique du Sud. «South Africa»

«fiduciaire» Fiduciaire d'une fiducie. S'entend en outre d'une personne qui est responsable de la gestion et du placement de biens d'un organisme de charité enregistré ou d'une caisse de retraite. «trustee»

«organisme de charité enregistré» Organisme de charité enregistré au sens de l'alinéa 110 (8) c) de la *Loi de l'impôt sur le revenu* (Canada). «registered charity»
S.R.C. 1952, chap. 148

«placement sud-africain» Placement qui, selon le cas : «South African investment»

- a) est effectué dans des actions d'une compagnie qui est constituée en vertu des lois de l'Afrique du Sud ou qui fait affaire en Afrique du Sud;
- b) est effectué dans des actions d'une compagnie qui a une participation importante dans une compagnie qui est constituée en vertu des lois de l'Afrique du Sud ou qui fait affaire en Afrique du Sud;

- (iii) persons who are citizens of South Africa or who ordinarily reside there,
- (d) an investment in shares of a corporation a substantial interest in which is held by a corporation that also holds a substantial interest in another corporation that is incorporated under the laws of South Africa or that carries on business in South Africa,
- (e) an investment in bonds, debentures or other evidences of indebtedness issued or guaranteed by the Government of South Africa or by a corporation whose shares are a South African investment under clause (a), (b), (c) or (d),
- (f) any other investment that has a substantial connection with South Africa;

“fiduciaire” “trustee” means a trustee of a trust and includes a person who is responsible for investing and managing the assets of a registered charity or a pension fund;

“action assortie du droit de vote” “voting share” means a share of a class of shares of a corporation that carries voting rights under all circumstances or under some circumstances that have occurred and are continuing.

Substantial interest (2) A person shall be deemed to have a substantial interest in a corporation if the person beneficially owns or controls 10 per cent or more of the issued and outstanding voting shares in the corporation.

Application of Act **2.** This Act applies to all trusts, registered charities and pension funds.

Trustee not liable R.S.O. 1980, c. 512 **3.** Despite the *Trustee Act* or any other law, a trustee who acts in accordance with this Act and in a reasonably prudent manner does not commit a breach of statutory or other legal duty by,

- (a) disposing of a South African investment even if the value of the property for which the trustee is responsible decreases or fails to increase sufficiently as a result; or

- c) est effectué dans des actions d'une compagnie dans laquelle une ou plusieurs des personnes suivantes ont une participation importante :
 - (i) des compagnies qui sont constituées en vertu des lois de l'Afrique du Sud,
 - (ii) des compagnies qui font affaire en Afrique du Sud,
 - (iii) des citoyens de l'Afrique du Sud ou des personnes qui ont leur résidence ordinaire en Afrique du Sud;
- d) est effectué dans des actions d'une compagnie dans laquelle une participation importante appartient à une compagnie qui a également une participation importante dans une autre compagnie qui est constituée en vertu des lois de l'Afrique du Sud ou qui fait affaire en Afrique du Sud;
- e) est effectué dans des obligations, débentures ou autres titres de créance émis ou garantis par le gouvernement de l'Afrique du Sud ou par une compagnie dont les actions constituent un placement sud-africain aux termes des alinéas a), b), c) ou d);
- f) a, par ailleurs, des liens étroits avec l'Afrique du Sud.

(2) Une personne est réputée avoir une participation importante dans une compagnie si elle est propriétaire bénéficiaire ou qu'elle a le contrôle de 10 pour cent ou plus des actions de la compagnie émises, en circulation et assorties du droit de vote.

Participation importante

2 La présente loi s'applique aux fiducies, aux organismes de charité enregistrés et aux caisses de retraite.

Champ d'application

3 Malgré la *Loi sur les fiduciaires* et toute autre loi, le fiduciaire qui agit conformément à la présente loi et fait preuve d'une prudence normale ne manque pas au devoir que lui impose la loi :

Absence de responsabilité
L.R.O., 1980, chap. 512

- a) s'il aliène un placement sud-africain, même s'il en résulte une diminution ou une augmentation insuffisante de la valeur des biens dont il a la responsabilité;

(b) refusing to acquire a South African investment.

Definition

4.—(1) In this section, “identifiable beneficiary” means an existing person who can be clearly identified as a beneficiary of a trust or a pension fund and does not include a person who has been declared mentally incompetent.

Consent of
beneficiaries
required

(2) If there are no more than 100 identifiable beneficiaries of a trust or a pension fund, section 3 applies only if a majority of them consent to the intended transaction and their combined beneficial interest in the trust or pension fund comprises more than 50 per cent of its assets.

Idem

(3) If there are more than 100 identifiable beneficiaries of a trust or pension fund, section 3 applies only if the trustee has made inquiries and has reasonable grounds to believe that a majority of them would consent to the intended transaction and that their combined beneficial interest in the trust or pension fund comprises more than 50 per cent of its assets.

Consent
of minor

(4) A person who has lawful custody of an identifiable beneficiary who is less than eighteen years of age may give or refuse consent on the beneficiary’s behalf.

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. The short title of this Act is the *South African Trust Investments Act, 1987*.

- b) s'il refuse d'investir ces biens dans un placement sud-africain.

4 (1) Dans le présent article, «bénéficiaire identifiable» Définition
s'entend d'une personne existante qui peut être identifiée avec exactitude en tant que bénéficiaire d'une fiducie ou d'une caisse de retraite. Est toutefois exclue la personne qui fait l'objet d'une déclaration d'incapacité mentale.

(2) Lorsqu'une fiducie ou une caisse de retraite n'a pas plus de 100 bénéficiaires identifiables, l'article 3 ne s'applique que si une majorité d'entre eux dont l'intérêt total dans la fiducie ou la caisse dépasse 50 pour cent des biens de la fiducie ou de la caisse donnent leur consentement à l'opération projetée. Consentement des bénéficiaires

(3) Lorsqu'une fiducie ou une caisse de retraite a plus de 100 bénéficiaires identifiables, l'article 3 ne s'applique que si le fiduciaire, s'étant renseigné, a des motifs raisonnables de croire qu'une majorité d'entre eux donneraient leur consentement à l'opération projetée et que leur intérêt total dans la fiducie ou la caisse dépasse 50 pour cent des biens de la fiducie ou de la caisse. Idem

(4) Une personne qui a la garde légitime d'un bénéficiaire identifiable âgé de moins de dix-huit ans peut donner ou refuser le consentement au nom du bénéficiaire. Consentement du mineur

5 La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en vigueur

6 Le titre abrégé de la présente loi est *Loi de 1987 sur les placements sud-africains détenus en fiducie*. Titre abrégé

Bill 9

**An Act permitting
Trustees
and other Persons
to dispose of
South African investments**

The Hon. I. Scott
Attorney General



1st Reading November 5th, 1987
2nd Reading December 14th, 1988
3rd Reading
Royal Assent
*(Reprinted as amended by the
Committee of the Whole House)*

Projet de loi 9

**Loi permettant
aux fiduciaires
et à d'autres personnes
d'aliéner
les placements sud-africains**

L'honorable I. Scott
procureur général

1^{re} lecture 5 novembre 1987
2^e lecture 14 décembre 1988
3^e lecture
sanction royale
*(Réimprimé tel qu'il est modifié par
le comité plénier de l'Assemblée)*

EXPLANATORY NOTES

The purpose of the Bill is to authorize trustees of trusts and persons responsible for managing and investing the assets of registered charities and pension funds to dispose of South African investments without committing a breach of duty even if the value of the property they manage decreases as a result. (Under the present law, these persons have a duty to invest the property they manage in reasonable and proper investments without consideration of moral issues).

The Bill provides that a trustee of a trust or person responsible for managing and investing the assets of a registered charity or pension fund who disposes of a South African investment, acting in a reasonably prudent manner, does not commit a breach of duty even if as a result the value of the property decreases.

However, trustees and persons responsible for pension funds are required, before they dispose of a South African investment, to obtain the consent of a majority of the identifiable beneficiaries (if there are no more than 100 identifiable beneficiaries) or to satisfy themselves that a majority of the identifiable beneficiaries would consent (if there are more than 100).

“South African investment” is defined in subsection 1 (1).

NOTES EXPLICATIVES

Le projet de loi permettrait aux fiduciaires de fiducies et aux personnes chargées de la gestion et du placement de biens appartenant aux organismes de charité enregistrés et aux caisses de retraite d'aliéner des placements sud-africains sans manquer à leur devoir, même si la valeur des biens qu'ils gèrent diminue en raison de cette aliénation. (La loi existante impose à ces personnes le devoir d'investir les biens qu'elles gèrent dans des placements raisonnables et appropriés, sans égard aux questions d'ordre moral).

Le projet de loi prévoit que le fiduciaire d'une fiducie ou la personne responsable de la gestion et du placement des biens d'un organisme de charité enregistré ou d'une caisse de retraite qui aliène un placement sud-africain en faisant preuve d'une prudence normale ne manque pas à son devoir même si la valeur des biens diminue en raison de cette aliénation.

Avant d'aliéner un placement sud-africain, il incombe cependant aux fiduciaires et aux personnes responsables des caisses de retraite d'obtenir le consentement d'une majorité des bénéficiaires identifiables (si leur nombre ne dépasse pas 100) ou de s'assurer qu'une majorité d'entre eux donneraient leur consentement (si leur nombre est supérieur à 100).

L'expression «placement sud-africain» est définie au paragraphe 1 (1).

Bill 9

1987

**An Act permitting
Trustees and other Persons
to dispose of South African Investments**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

“organisme
de charité
enregistré”
R.S.C. 1952,
c. 148

“registered charity” means a registered charity within the meaning of paragraph 110 (8) (c) of the *Income Tax Act* (Canada);

“Afrique du
Sud”

“South Africa” means the Republic of South Africa;

“placement
sud-africain”

“South African investment” means,

- (a) an investment in shares of a corporation that is incorporated under the laws of South Africa or carries on business in South Africa,
- (b) an investment in shares of a corporation that has a substantial interest in a corporation that is incorporated under the laws of South Africa or carries on business in South Africa,
- (c) an investment in shares of a corporation a substantial interest in which is held by one or more of the following,
 - (i) corporations that are incorporated under the laws of South Africa,
 - (ii) corporations that carry on business in South Africa,

Projet de loi 9

1987

**Loi permettant
aux fiduciaires et à d'autres personnes
d'aliéner les placements sud-africains**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

«action assortie du droit de vote» Action d'une catégorie des actions d'une compagnie assortie d'un droit de vote absolu ou assortie d'un droit de vote en raison de la survenance d'une éventualité qui s'est produite et se poursuit. «voting share»

«Afrique du Sud» La République d'Afrique du Sud. «South Africa»

«fiduciaire» Fiduciaire d'une fiducie. S'entend en outre d'une personne qui est responsable de la gestion et du placement de biens d'un organisme de charité enregistré ou d'une caisse de retraite. «trustee»

«organisme de charité enregistré» Organisme de charité enregistré au sens de l'alinéa 110 (8) c) de la *Loi de l'impôt sur le revenu* (Canada). «registered charity»
S.R.C. 1952, chap. 148

«placement sud-africain» Placement qui, selon le cas : «South African investment»

- a) est effectué dans des actions d'une compagnie qui est constituée en vertu des lois de l'Afrique du Sud ou qui fait affaire en Afrique du Sud;
- b) est effectué dans des actions d'une compagnie qui a une participation importante dans une compagnie qui est constituée en vertu des lois de l'Afrique du Sud ou qui fait affaire en Afrique du Sud;

- (iii) persons who are citizens of South Africa or who ordinarily reside there,
- (d) an investment in shares of a corporation a substantial interest in which is held by a corporation that also holds a substantial interest in another corporation that is incorporated under the laws of South Africa or that carries on business in South Africa,
- (e) an investment in bonds, debentures or other evidences of indebtedness issued or guaranteed by the Government of South Africa or by a corporation whose shares are a South African investment under clause (a), (b), (c) or (d),
- (f) any other investment that has a substantial connection with South Africa;

“fiduciaire” “trustee” means a trustee of a trust and includes a person who is responsible for investing and managing the assets of a registered charity or a pension fund;

“action assortie du droit de vote” “voting share” means a share of a class of shares of a corporation that carries voting rights under all circumstances or under some circumstances that have occurred and are continuing.

Substantial interest (2) A person shall be deemed to have a substantial interest in a corporation if the person beneficially owns or controls 10 per cent or more of the issued and outstanding voting shares in the corporation.

Application of Act **2.** This Act applies to all trusts, registered charities and pension funds.

Trustee not liable
R.S.O. 1980, c. 512 **3.** Despite the *Trustee Act* or any other law, a trustee who acts in accordance with this Act and in a reasonably prudent manner does not commit a breach of statutory or other legal duty by,

- (a) disposing of a South African investment even if the value of the property for which the trustee is responsible decreases or fails to increase sufficiently as a result; or

- c) est effectué dans des actions d'une compagnie dans laquelle une ou plusieurs des personnes suivantes ont une participation importante :
 - (i) des compagnies qui sont constituées en vertu des lois de l'Afrique du Sud,
 - (ii) des compagnies qui font affaire en Afrique du Sud,
 - (iii) des citoyens de l'Afrique du Sud ou des personnes qui ont leur résidence ordinaire en Afrique du Sud;
- d) est effectué dans des actions d'une compagnie dans laquelle une participation importante appartient à une compagnie qui a également une participation importante dans une autre compagnie qui est constituée en vertu des lois de l'Afrique du Sud ou qui fait affaire en Afrique du Sud;
- e) est effectué dans des obligations, débetures ou autres titres de créance émis ou garantis par le gouvernement de l'Afrique du Sud ou par une compagnie dont les actions constituent un placement sud-africain aux termes des alinéas a), b), c) ou d);
- f) a, par ailleurs, des liens étroits avec l'Afrique du Sud.

(2) Une personne est réputée avoir une participation importante dans une compagnie si elle est propriétaire bénéficiaire ou qu'elle a le contrôle de 10 pour cent ou plus des actions de la compagnie émises, en circulation et assorties du droit de vote.

Participation importante

2 La présente loi s'applique aux fiducies, aux organismes de charité enregistrés et aux caisses de retraite.

Champ d'application

3 Malgré la *Loi sur les fiduciaires* et toute autre loi, le fiduciaire qui agit conformément à la présente loi et fait preuve d'une prudence normale ne manque pas au devoir que lui impose la loi :

Absence de responsabilité
L.R.O. 1980, chap. 512

- a) s'il aliène un placement sud-africain, même s'il en résulte une diminution ou une augmentation insuffisante de la valeur des biens dont il a la responsabilité;

(b) refusing to acquire a South African investment.

Definition

4.—(1) In this section, “identifiable beneficiary” means an existing person who can be clearly identified as a beneficiary of a trust or a pension fund and does not include a person who has been declared mentally incompetent.

Consent of
beneficiaries
required

(2) If there are no more than 100 identifiable beneficiaries of a trust or pension fund, section 3 applies only if the trustee gives written notice to the identifiable beneficiaries of the intended transaction and the trustee does not receive, within sixty days after giving the written notice, notice of opposition to the transaction from a majority of identifiable beneficiaries whose combined beneficial interest in the trust or pension fund comprises more than 50 per cent of its assets.

Idem

(3) If there are more than 100 identifiable beneficiaries of a trust or pension fund, section 3 applies only if the trustee has made inquiries and has reasonable grounds to believe that a majority of them would consent to the intended transaction and that their combined beneficial interest in the trust or pension fund comprises more than 50 per cent of its assets.

Consent
of minor

(4) A person who has lawful custody of an identifiable beneficiary who is less than eighteen years of age may give or refuse consent on the beneficiary’s behalf.

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. The short title of this Act is the *South African Trust Investments Act, 1988*.

- b) s'il refuse d'investir ces biens dans un placement sud-africain.

4 (1) Dans le présent article, «bénéficiaire identifiable» s'entend d'une personne existante qui peut être identifiée avec exactitude en tant que bénéficiaire d'une fiducie ou d'une caisse de retraite. Est toutefois exclue la personne qui fait l'objet d'une déclaration d'incapacité mentale.

Définition

(2) Lorsqu'une fiducie ou une caisse de retraite n'a pas plus de 100 bénéficiaires identifiables, l'article 3 ne s'applique que si le fiduciaire leur donne un avis écrit de l'opération projetée et qu'il ne reçoit pas, dans les soixante jours de l'avis écrit, un avis d'opposition à l'opération provenant d'une majorité des bénéficiaires identifiables dont l'intérêt total dans la fiducie ou la caisse dépasse 50 pour cent des biens de la fiducie ou de la caisse.

Consentement
des
bénéficiaires

(3) Lorsqu'une fiducie ou une caisse de retraite a plus de 100 bénéficiaires identifiables, l'article 3 ne s'applique que si le fiduciaire, s'étant renseigné, a des motifs raisonnables de croire qu'une majorité d'entre eux donneraient leur consentement à l'opération projetée et que leur intérêt total dans la fiducie ou la caisse dépasse 50 pour cent des biens de la fiducie ou de la caisse.

Idem

(4) Une personne qui a la garde légitime d'un bénéficiaire identifiable âgé de moins de dix-huit ans peut donner ou refuser le consentement au nom du bénéficiaire.

Consentement
du mineur

5 La présente loi entre en vigueur le jour où elle reçoit la sanction royale.

Entrée en
vigueur

6 Le titre abrégé de la présente loi est *Loi de 1988 sur les placements sud-africains détenus en fiducie*.

Titre abrégé

Bill 10

An Act to amend the Election Act, 1984

Mr. Cousens

1st Reading November 5th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill exempts members of the Canadian Forces and their spouses and children who live with them from the requirement of having resided in Ontario for the six months immediately before polling day for the purpose of being entitled to vote in an election to the Legislative Assembly.

Bill 10**1987****An Act to amend the Election Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 15 of the *Election Act, 1984*, being chapter 54, is amended by adding thereto the following subsection:

(1a) Clause (1) (c), as re-enacted by subsection (2), does not apply to a person who on the general polling day is a member of the Canadian Forces as defined by the *National Defence Act* (Canada) or a member's spouse or child living with him or her.

Exemption
from
cl. (1) (c)
R.S.C. 1970,
c. N-4

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Election Amendment Act, 1987*.

Short title

Bill 11

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics

1st Reading November 9th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to provide authority for borrowing moneys for the Consolidated Revenue Fund. The principal borrowings authorized under the *Ontario Loan Act* in recent years have been from the following sources:

1. Canada Pension Plan
2. Teachers' Superannuation Fund
3. The public capital market

The amount of \$1,600,000,000 authorized by the Bill is intended to cover borrowing primarily from the first two listed sources.

The Bill provides that any unused borrowing authority will expire on September 30th, 1988.

Bill 11

1987

**An Act to authorize the Raising of Money on the
Credit of the Consolidated Revenue Fund**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by the *Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$1,600,000,000.

Loans up to
\$1,600,000,000

R.S.O. 1980,
c. 161

(2) The sum of money authorized to be raised by subsection (1) for the purposes mentioned therein shall include the principal amounts of Province of Ontario debentures issued to the Teachers' Superannuation Fund under authority of the *Teachers' Superannuation Act, 1983* and to the Ontario Municipal Employees Retirement Fund under authority of the *Ontario Municipal Employees Retirement System Act*, but shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

Idem

1983, c. 84

R.S.O. 1980,
c. 348

2. No money shall be raised by way of loan under subsection 1 (1) except to the extent authorized by order of the Lieutenant Governor in Council made prior to the 30th day of September, 1988.

Limitation

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is the *Ontario Loan Act, 1987*

Short title

Bill 11

(Chapter 1
Statutes of Ontario, 1988)

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics



<i>1st Reading</i>	November 9th, 1987
<i>2nd Reading</i>	November 30th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 11

1987

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by the *Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$1,600,000,000.

Loans up to
\$1,600,000,000
R.S.O. 1980,
c. 161

(2) The sum of money authorized to be raised by subsection (1) for the purposes mentioned therein shall include the principal amounts of Province of Ontario debentures issued to the Teachers' Superannuation Fund under authority of the *Teachers' Superannuation Act, 1983* and to the Ontario Municipal Employees Retirement Fund under authority of the *Ontario Municipal Employees Retirement System Act*, but shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

Idem

1983, c. 84

R.S.O. 1980,
c. 348

2. No money shall be raised by way of loan under subsection 1 (1) except to the extent authorized by order of the Lieutenant Governor in Council made prior to the 30th day of September, 1988.

Limitation

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is the *Ontario Loan Act, 1988*.

Short title

Bill 12

An Act to ban Sunday racing and intertrack wagering at Greenwood Raceway and to change the composition and procedures of the Ontario Racing Commission

Ms Bryden

1st Reading November 9th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 2. Racing and intertrack wagering on Sunday is banned.

SECTION 3. A mechanism is set up requiring the Ontario Racing Commission to hold a public hearing and consider any submissions of interested persons residing near Greenwood Raceway before making a decision concerning the Raceway that may affect the quality of those persons' lives.

SECTION 4. A decision of the Commission under section 3 is made subject to review by an independent adjudicator, whose decision is final.

SECTION 5. Self-explanatory.

SECTION 6. Self-explanatory.

SECTION 7. The *Racing Commission Act* is amended to provide that the Commission be composed of seven members, of whom only three can be representatives of the racing industry. Of the others, one must live within one kilometre of the Greenwood Raceway, two must live within four kilometres of a race track in Ontario and the seventh, the chairman, must be independent of the industry and the residents living in the vicinity of race tracks.

Bill 12**1987**

**An Act to ban Sunday racing
and intertrack wagering at Greenwood Raceway
and to change the composition and procedures of
the Ontario Racing Commission**

Whereas, the Greenwood Raceway is the only race track in Ontario located in a large, high density, urban residential area; and whereas the people who live in the vicinity of the Greenwood Raceway are seriously disadvantaged and suffer a deterioration in the quality of their lives as a result of the parking, traffic and transit congestion and by the noise and litter that the operation of the Greenwood Raceway causes to them close to 300 days each year; and whereas the Greenwood Raceway has had a tradition of not operating on Sunday since it opened more than 100 years ago; and whereas it is in the public interest to ensure that the people who live in the vicinity of the Greenwood Raceway are treated fairly and justly by being permitted to have Sundays free of racing activities and to have quiet enjoyment of their homes and property on that day; and whereas the people who live in the vicinity of the Greenwood Raceway and of other race tracks are not given an opportunity for public input into the decisions of the Ontario Racing Commission regulating the days and hours of racing and intertrack wagering for race tracks in Ontario even though those decisions have a major impact on those people's lives;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Commission” means the Ontario Racing Commission established under the *Racing Commission Act*;

R.S.O. 1980,
c. 429

“Raceway” means the Greenwood Raceway, located on Queen Street East in the City of Toronto.

No Sunday
race track
activities

2. There shall be no racing or intertrack wagering activities carried on at the Raceway on Sundays.

Opportunity
to be heard

3.—(1) Before the Commission makes any decision concerning the operation of the Raceway that may affect the quality of life of the persons who live within one kilometre of the Raceway, it shall hold a public hearing and give full consideration to any oral or written submissions concerning the proposed decision made at that hearing by persons who live within one kilometre of the Raceway and by representatives of any organizations representing those persons.

Notice of
hearing

(2) At least three weeks before holding a public hearing under subsection (1), the Commission shall publish a notice of public hearing in at least two daily newspapers having general circulation in Toronto and shall post the notice outside the entrance to the Raceway.

Contents of
notice of
hearing

(3) The notice published and posted under subsection (2) shall state,

- (a) the decision that is proposed to be made;
- (b) the date, time and place for the hearing; and
- (c) that persons who live within one kilometre of the Raceway and representatives of organizations representing those persons are invited to make oral or written representations to the Commission concerning the proposed decision at the hearing.

Reasons for
decision

(4) The Commission shall give written reasons for any decision made under this section and shall make a copy of those reasons available to any member of the public who so requests.

Notice of
decision

(5) Where, after holding a public hearing under subsection (1), the Commission makes a decision concerning its proposal, it shall publish a notice of its decision in at least two daily newspapers having general circulation in the City of Toronto and shall post a notice of its decision outside the entrance to the Raceway and that notice shall inform persons of where they may obtain copies of the reasons for the decision.

Appeal

4.—(1) Where, within thirty days after a decision of the Commission made under section 3 is published and posted, at least ten persons who live within one kilometre of the Raceway notify the Chief Justice of the Supreme Court of Ontario in writing of their desire to have the decision reviewed, there

shall be a review of the decision and the Chief Justice shall appoint an adjudicator to carry out that review.

(2) An adjudicator appointed under subsection (1) shall by whatever means the adjudicator deems appropriate consider the position of the Commission, representatives of the racing industry, the persons who requested the review and any other persons who live within one kilometre of the Raceway and shall make whatever decision he or she considers appropriate.

Adjudicator
to make
decision

(3) An adjudicator appointed under subsection (1) may attempt to mediate or settle any outstanding matters while conducting a review.

Adjudicator
may mediate

(4) A decision of an adjudicator is final.

Decision final

(5) The *Statutory Powers Procedure Act* does not apply to a review by an adjudicator under this Act.

Non-
application of
R.S.O. 1980,
c. 484

(6) The Minister responsible for administering the *Racing Commission Act* shall pay an adjudicator appointed under subsection (1) such fees and expenses as are prescribed by the regulations.

Fees of
adjudicator
R.S.O. 1980,
c. 429

5. The Lieutenant Governor in Council may make a regulation prescribing the fees and expenses payable to an adjudicator under this Act.

Regulations

6. The provisions of this Act are in addition to the provisions of the *Racing Commission Act*, and in the event of a conflict between a provision of that Act and a provision of this Act, the provision of this Act shall prevail.

Conflict

7.—(1) Section 2 of the *Racing Commission Act*, being chapter 429 of the Revised Statutes of Ontario, 1980, is amended by striking out “not fewer than three and not more than” in the third and fourth lines.

(2) The said section 2 is further amended by adding thereto the following subsection:

(2) Four of the persons appointed under subsection (1) shall be persons who are not connected with the horse racing industry and of those,

Idem

(a) one shall be a person who resides within one kilometre of the Raceway;

(b) two shall be persons who reside within four kilometres of a race track in Ontario; and

- (c) one shall be a person who is independent of the horse racing industry and of the persons who live in the vicinity of race tracks in Ontario.

(3) Subsection 5 (1) of the said Act is repealed and the following substituted therefor:

Chairman
and vice-
chairman

(1) The person appointed under clause 2 (2) (c) shall be the chairman and the Lieutenant Governor in Council shall name one of the other members to be the vice-chairman.

Commence-
ment

8. This Act comes into force on the day it receives Royal Assent.

Short title

9. The short title of this Act is the *Greenwood Raceway Act, 1987*.

Bill 13

An Act respecting Environmental Rights in Ontario

Mrs. Grier



1st Reading November 9th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to provide for environmental rights in Ontario. The Bill permits an action to be brought in the Supreme Court of Ontario by any person for the protection of the environment. The Bill also provides for public notice and review of certain approvals, permits or other environment-related orders before the approvals, permits or orders come into force. Other provisions of the Bill provide for public access to information relating to environmental decisions and for regular review by the Environmental Assessment Board of all regulations affecting the environment. The Bill also permits the Lieutenant Governor in Council to establish a fund to assist persons and public interest groups for the purpose of ensuring that points of view representative of significant bodies of opinion are adequately represented in environmental proceedings.

Bill 13**1987****An Act respecting Environmental Rights in Ontario**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I**INTERPRETATION AND PURPOSE****1. In this Act,**

Definitions

“Board” means the Environmental Assessment Board established under the *Environmental Assessment Act*;

R.S.O. 1980,
c. 140

“contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from the activities of people which may,

- (a) impair the quality of the environment or the public trust therein for any use that can be made of it,
- (b) cause injury or damage to property or to plant or animal life,
- (c) cause harm or material discomfort to any person,
- (d) adversely affect the health or impair the safety of any person, or
- (e) render any property or plant or animal life unfit for use by people,

and “contamination” has a corresponding meaning;

“Court” means the Supreme Court of Ontario;

“degradation” refers to any destruction or significant decrease in the quality of the environment or the public trust therein

other than a change resulting from contamination and “degrade” has a corresponding meaning;

“environment” means,

- (a) air, land or water,
- (b) plant and animal life, including people,
- (c) the social, economic and cultural conditions that influence the life of people or a community,
- (d) any building, structure, machine or other device or thing made by people,
- (e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of people, or
- (f) any part or combination of the foregoing and the inter-relationships between any two or more of them,

in or of Ontario;

“Minister” means the Minister of the Environment;

“public trust” means the collective interest of residents of the Province of Ontario in the quality of the environment and the protection thereof and the heritage therein for future generations;

“regulation” means a regulation made under an Act listed in the Schedule to this Act.

Environ-
mental
rights

2.—(1) The people of Ontario have a right to clean air, pure water and the preservation of the natural, scenic, historic and aesthetic values of the environment.

Idem

(2) Ontario’s public lands, waters and natural resources are the common property of all the people, including generations yet to come, and, as trustee of those lands, waters and resources, the Government of Ontario shall conserve and maintain them for the benefit of present and future generations.

Declaration

(3) It is hereby declared that it is in the public interest to provide every person with an adequate remedy to protect and conserve the environment and the public trust therein from contamination and degradation.

3.—(1) A person who considers that the environment is being contaminated or degraded may in writing, specifying the nature of the contamination or degradation, request that the Minister investigate the alleged contamination or degradation. Request for investigation

(2) Where the Minister receives a written request under subsection (1) and is satisfied that the request is made in good faith and is not frivolous, the Minister shall make, or cause to be made, any investigation that he or she considers necessary of the alleged contamination or degradation, its source, its effect on the environment and of any advisable remedial action. Written request

(3) Upon an investigation referred to in subsection (2) being completed, the Minister shall provide a copy of the resulting report to the person who requested the investigation. Report

PART II

CAUSE OF ACTION

4.—(1) Where an activity has contaminated or degraded or an activity is likely to commence, is commencing or is continuing that threatens to contaminate or degrade the environment, any person may commence an action in the Supreme Court of Ontario, without having to show any greater or different right, harm or interest than that of other members of the public or any pecuniary or proprietary right or interest in the subject-matter of the proceedings, against, Right of action

- (a) any person who is responsible for the activity; and
- (b) any Minister responsible for regulatory, fiscal or proprietary control of the activity.

(2) Subsection (1) applies without any requirement that the person commencing the action allege or establish that there had been an infringement of an approval, permit, licence, standard, regulation, rule or order established by or under an Act listed in the Schedule. Idem

(3) In an action commenced under this section, if the activity complained of is not governed by any legally established standard, the Court may hear evidence as to the standard, if any, that should apply to the defendant, having regard to, Court may determine standard

- (a) the right of the people of Ontario to the protection of the environment and the public trust therein against contamination or degradation;

- (b) the fulfillment of the widest range of beneficial uses of the environment without contamination or degradation; and
- (c) the achievement of a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities,

and the Court may order the defendant to comply with such standard as it may determine.

Security
for costs
or damages

5.—(1) At any time prior to a trial of the issue in any action commenced under this Act, any defendant or third party may apply to the Court for an order requiring the person bringing the action to post security for costs or damages.

Notice

(2) An application under subsection (1) shall be on notice to all parties and the Court may hear argument concerning the application from any party as to,

- (a) the seriousness of the offence or harm alleged;
- (b) the consequences to the defendant of the order sought; or
- (c) any other matter that the Court considers relevant to the posting of security for costs or damages.

Limitation
on order

(3) Upon the completion of the hearing referred to in subsection (2), if the Court is satisfied that the person bringing the action,

- (a) has a *prima facie* case to bring before the Court; and
- (b) is bringing the action for the protection of the environment or the public trust therein,

the Court shall not order the posting of security for costs or damages in an amount in excess of \$500.

Onus

6.—(1) Where the activity of the defendant that is the subject-matter of an action is not governed by a standard established by or under an Act listed in the Schedule or pursuant to subsection 3 (3) and where the plaintiff has established that the activity of the defendant has contaminated or degraded or is likely to contaminate or degrade the quality of the environment, the onus shall be on the defendant to establish in defence that there is no feasible and prudent alternative to the defendant's activity and that such activity is in the best

interests of the public having regard to the matters set out in subsection 4 (3).

(2) It shall be a defence to an action commenced under this Act that the activity of the defendant that is the subject-matter of this action is authorized by a standard established by or under an Act listed in the Schedule unless the plaintiff can establish, on a balance of probabilities, that the activity has caused or is likely to cause severe or irreparable contamination or degradation to the environment. Defence

(3) It shall not be a defence to an action commenced under this Act that, Prohibited defences

- (a) the defendant is not the sole cause of the alleged or potential contamination or degradation; or
- (b) it cannot be established that the contaminant which the defendant discharged or deposited or permitted to be discharged or deposited was the cause, in fact, of the contamination or degradation of the environment or the public trust therein, where the effect on the environment is of a nature consistent with the contaminant or source of degradation being the total or partial, immediate or mediate cause.

7. In an action commenced under this Act, where it has been established that the activity of the defendant has contaminated or degraded or is likely to contaminate or degrade the environment, the Court may grant either an interim or permanent injunction, order the defendant to remedy any damage caused by his activity, award damages, impose conditions on the defendant or make such other order as the Court may consider is necessary. Injunction, etc.

8.—(1) The Court may, Reference

- (a) on the motion of any party; or
- (b) on its own motion,

refer any question or questions, except the final determination of the issue in question, to the Board as the Court may consider appropriate and the proceedings before the Board shall be conducted in accordance with and subject to the provisions of the *Statutory Powers Procedure Act* and when so referring, the Court may also grant an interim injunction or such other temporary relief as the Court considers necessary for the protection of the environment or the public trust therein pending

final determination of the issue and, in so referring, the Court shall retain jurisdiction of the action.

Order

(2) When the Board has completed its review and consideration of the question referred to it under subsection (1), the Board shall make recommendations concerning the matter in question to the Court, and the Court shall review the recommendations and make such order as it considers appropriate under section 7.

Inspector

9.—(1) In any action under this Act, the Court may appoint an inspector, who shall be a disinterested person and qualified as an expert in the relevant field, to take technical and scientific testimony under oath and make a record thereof and the inspector shall report his or her findings and opinion thereon to the Court without prejudice to the right of any party to examine the inspector or any person who has given testimony to the inspector.

Costs

(2) The Court may order that the costs of the inspector be paid in such manner and by such persons as the Court considers appropriate.

PART III

PARTIES, INTERVENORS *AMICUS CURIAE*, CLASS ACTIONS

Parties,
etc.

10. Whenever a proceeding before any board, tribunal, commission or court, or any appeal or review thereof, is authorized under the provisions of this Act or an Act listed in the Schedule, the board, tribunal, commission or court may permit any person to join as a party, intervenor or *amicus curiae* to the proceeding, appeal or review as the board, tribunal, commission or court may consider appropriate having regard to the purpose of this Act.

Class
actions

11.—(1) In an action under this Act, the Court may by order permit one or more persons to act as representatives of a class of persons where, in the opinion of the Court,

- (a) the claims of the representative party are typical of the claims of the class;
- (b) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members;
- (c) a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

- (d) the representative party is acting in good faith and it is *prima facie* in the interests of the class that the action be maintained as a class action.

(2) The Court may provide in the judgment of a class action for subsequent determination of the amount and distribution of damages assessed against the defendant. Judgment

PART IV

INSTRUMENTS AND REGULATIONS

12.—(1) In this section,

Definitions

“appropriate board” means any board, tribunal or commission established by an Act listed in the Schedule empowered to hold hearings with respect to a matter relating to such Act, and where no such board exists, the Board;

“instrument” means any licence, permit, approval, certificate of approval, program approval, control order or other order made under an Act listed in the Schedule that would permit a person to contaminate or degrade the environment in contravention of any such Act or the regulations made thereunder;

“proper authority” means any authority designated by an Act listed in the Schedule empowered to issue any instrument pursuant to any such Act.

(2) Notwithstanding any other Act, no instrument shall have force and effect unless the proper authority has given notice of the proposed provisions of the instrument by publication in *The Ontario Gazette* and in two newspapers circulating throughout the Province of Ontario and that is in accordance with the other provisions of this section. Notice of proposed instrument

(3) Any person may, within thirty days of the giving of notice or within such longer time as may be stated in the notice, Submissions

- (a) make written submissions to the proper authority with respect to the proposed provisions of the instrument; and
- (b) by written notice to the proper authority request a hearing by the appropriate board with respect to the proposed provisions of the instrument.

Idem

(4) Where the proper authority has received notice of a request for a hearing, it shall refer the matter to the appropriate board unless, in the opinion of the authority, the request is not made in good faith or is frivolous or is made only for the purpose of delay.

Idem

(5) Where the proper authority has declined to refer the matter to the appropriate board under subsection (4), the proper authority shall give notice for a hearing under subsection (3), together with written reasons therefor.

Where
instrument
may be
issued

(6) Where there is no notice of a request for a hearing under subsection (3), or where the proper authority has declined to refer the matter to the appropriate board under subsection (4), the proper authority may issue the proposed instrument,

- (a) where there is no notice of a request for a hearing, not less than ten days after the time for filing such notice has elapsed;
- (b) where the proper authority has declined to refer the matter to the relevant board, not less than twenty days after the time for filing such notice has elapsed.

Review of
instrument

(7) Any person may make an application to the Board requesting the Board to review an existing instrument having regard to the adequacy of the instrument to protect the environment and the public trust therein from contamination or degradation, especially in the light of technological advances that can be applied in the Province of Ontario and the Board shall hear the application where a *prima facie* case has been made that the instrument should be amended or revoked.

Preliminary
hearing

(8) The Board shall hold a preliminary hearing to determine whether a *prima facie* case has been made in an application under subsection (7) unless the Board is of the opinion that the application is not made in good faith or is frivolous.

Notice

(9) Where the Board decides not to hold a preliminary hearing under subsection (8), or where the Board decides that a *prima facie* case has not been made under subsection (7), the Board shall give notice of its decision to the person making the application, together with written reasons therefor.

Notice of
hearing

(10) Where the appropriate board holds a hearing under subsection (4) or (7), the appropriate board shall,

- (a) appoint a time and place for the hearing at a city or town convenient to persons likely to be affected by the contamination or degradation;
- (b) cause notice to be given of the hearing,
 - (i) to the proper authority,
 - (ii) to any person who submitted notice to the proper authority under subsection (3),
 - (iii) to any person who submitted notice to the Board under subsection (7),
 - (iv) to any person as the appropriate board may direct, and
 - (v) to the public, by publication in *The Ontario Gazette* and in two newspapers circulating throughout the Province of Ontario.

(11) Any hearing initiated under the provisions of this section shall be conducted according to the rules and procedures that apply to the appropriate board, including the rules and procedures established by this Act. Procedure

(12) Upon the completion of the hearing, the appropriate board may make such recommendations, order or decision in respect of the matter referred to it under this section as the board is empowered to make pursuant to its enabling Act. Recommendations, etc.

(13) The proper authority may, in an emergency situation, issue an instrument that it is empowered to issue pursuant to an Act listed in the Schedule without complying with the other provisions of this section but, where the authority issues an instrument in an emergency situation, the authority shall take steps to comply with the provisions of this section within sixty days of the date on which the instrument was issued. Emergencies

13.—(1) In 1987 and every fifth year thereafter, the Board shall review all regulations that relate to the quality of the environment having regard to their adequacy to protect the environment and the public trust therein from contamination and degradation, especially in the light of technological advances that can be applied in the Province of Ontario. Review of regulations

(2) The Board shall give public notice of the review and, during the review, may receive public submissions and evidence to the extent and in the manner that it considers appropriate. Public notice

Report

(3) Upon completion of the review, the Board shall make a report thereon to the designated Minister, including in the report any recommended changes to the regulations, and the designated Minister, after receiving the report shall then lay the report before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

Notice of
proposed
regulation

14.—(1) In this section, “regulation-making authority” means any authority designated by an Act listed in the Schedule empowered to make any regulation under any such Act.

Publication

(2) Where a regulation-making authority proposes to make a regulation, it shall cause the proposed regulation to be published in *The Ontario Gazette* at least sixty days before it proposes to file the regulation with the Registrar of Regulations and request briefs or submissions in relation to the proposed regulation.

Effect of
contravention

(3) A regulation filed in contravention of subsection (2) does not come into effect.

PART V

ACCESS TO INFORMATION

Definition

15.—(1) In this section, “designated Minister” means any minister designated by an Act listed in the Schedule to administer and enforce the provisions of any such Act.

Right to
information

(2) Every person has the right to obtain from any designated Minister any available information concerning the quantity, quality or concentration of contaminants emitted, issued, discharged or deposited by any source of contamination or degradation.

Right to
examine

(3) The designated Minister shall permit any person who applies therefor to examine any licence, permit, approval, certificate of approval, provisional certificate of approval, control order or other order, notice of intention to issue a control order, program approval, provisional certificate of approval, notice of violation of an Act listed in the Schedule, and any information in support of any such document, and, on payment of a fee not to exceed ten cents per page, the person shall be provided with a copy thereof.

Idem

(4) The designated Minister shall permit any person who applies therefor to examine any report on any test, observation, inspection or analysis carried out by or under the Minister's authority relating to any operation subject to an Act

listed in the Schedule under the Minister's jurisdiction, and, on payment of a fee not to exceed ten cents per page, the person shall be provided with a copy thereof.

(5) Notwithstanding subsections (3) and (4), the designated Minister may refuse an application made under subsections (3) and (4) where, in his or her opinion, the information sought to be disclosed contains,

Where
disclosure
may be
reduced

- (a) information the disclosure of which would be injurious to law enforcement or the conduct of lawful investigations, including investigative techniques or plans for specific lawful investigations;
- (b) information containing personal information respecting an identifiable individual including, without restricting the generality of the foregoing,
 - (i) vital statistics,
 - (ii) background personal information,
 - (iii) medical, criminal, educational or employment records or history,
 - (iv) the personal opinions or views of the individual, unless those opinions or views are given in the course of employment in the public service of the Government of Ontario;
- (c) information of a financial, commercial, scientific or technical sort,
 - (i) the disclosure of which could reasonably be expected to prejudice significantly the competitive position, or interfere significantly with contractual or other negotiations, of a person, group of persons, organization or government institution, or
 - (ii) the disclosure of which could reasonably be expected to result in undue financial loss or gain by a person, group of persons, organization or government institution,

and which, without restricting the generality of the foregoing, includes confidential technology, trade secrets, marketing information, customer lists, advertising budgets and funding sources; or

- (d) records of proposals and recommendations to and deliberations and proceedings of the Executive Council or any committee thereof.

Notice

(6) Where the designated Minister, under subsection (5), refuses an application for disclosure of information, he or she shall, within twenty days, so inform the applicant, together with written reasons thereof, and the Minister shall inform the applicant of the applicant's right of appeal to the Board.

Hearing

(7) Any applicant may, within fifteen days of receipt of a notice under subsection (6), by written notice served upon the designated Minister and the Board, require a hearing before the Board.

Idem

(8) In a hearing under subsection (7), the Board shall take every precaution, including, when appropriate, receiving representations without notice and conducting hearings in private, to avoid disclosure by the Board or any other person of any information the disclosure of which may be refused under this section.

Onus

(9) In a hearing under subsection (7), the onus of establishing that access to the information may be refused shall be on the designated Minister concerned.

Order

(10) At the conclusion of the hearing, the Board may make such order as it considers appropriate, having regard to the provisions of this section, and without restricting the generality of the foregoing, may,

- (a) order the disclosure of all or part of the information sought to be disclosed; or
- (b) where the Board has determined that the information should not be disclosed, order that a non-confidential summary of all or any part of the information be prepared.

Appeal

(11) An appeal lies to the Divisional Court of Ontario from a decision of the Board on a point of law or jurisdiction.

PART VI

PUBLIC INTEREST FUNDING

Definition

16.—(1) In this section, “Fund” means the Environmental Hearing Assistance Fund.

(2) The Lieutenant Governor in Council may establish a Fund to be known as the Environmental Hearing Assistance Fund.

(3) Where a Fund has been established under subsection (2), the moneys required for the purposes of the Fund shall be paid out of the Consolidated Revenue Fund in the fiscal year during which it is established and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

(4) Subject to subsection (5), whenever a proceeding before any board, tribunal, commission or court, or any appeal or review thereof, is authorized under the provisions of this Act or an Act listed in the Schedule, any party or intervenor who engages in proceedings for the purpose of protecting and conserving the environment may, at any time, make an application for financial assistance to the Board.

(5) A person may apply under subsection (4) only where that person,

- (a) represents an interest representative of significant bodies of opinions that would otherwise not be represented at the proceedings; and
- (b) does not have sufficient financial resources to enable him to adequately represent that interest.

(6) Where a Fund is available and the Board is satisfied financial assistance is appropriate, the Board may order that a sum be paid to the applicant therefor from the Fund in such manner, at such times and in such amount as the Board considers appropriate.

(7) No person is precluded from applying under subsection (4) by reason only that he has previously received financial assistance under subsection (6).

(8) Where it appears to the Board that several parties or intervenors having identical or substantially similar interests have applied for financial assistance from the Board, the Board may consolidate the applications and make such order concerning payment as it considers appropriate.

(9) In considering the sum to be awarded to any applicant, the Board shall have regard to all the attendant costs associated with participating in the proceedings, including,

- (a) legal fees;

- (b) disbursements;
- (c) conduct money;
- (d) witness fees;
- (e) fees for relevant reports and studies; and
- (f) any other cost that is relevant and appropriate to participation in the proceedings.

PART VII

EMPLOYEE RIGHTS

No discipline,
dismissal,
etc.,
by employer

17.—(1) No employer shall,

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose any penalty upon an employee; or
- (d) intimidate or coerce an employee,

because the employee has reported or proposes to report to the appropriate authority an act that contaminates or degrades the environment.

Penalty
for
offence

(2) Where an employer is convicted of an offence under subsection (1), the provincial judge making the conviction shall, in addition to the penalty, order what action the employer shall take or what the employer shall refrain from doing and such order may include the reinstatement in employment of the employee with compensation for loss of wages and other benefits to be assessed against the employer.

Offence

(3) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

PART VIII

MISCELLANEOUS

Common law
remedies
preserved

18. Nothing herein contained shall be construed so as to repeal, remove or reduce any existing remedy available at law to any person.

19. Where a conflict appears between any other Act, including the *Environmental Protection Act*, the provision of this Act shall prevail.

Conflict
R.S.O. 1980,
c. 141

20. This Act binds the Crown.

Crown

21. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

22. The short title of this Act is the *Ontario Environmental Rights Act, 1987*.

Short title

SCHEDULE

Conservation Authorities Act

Consolidated Hearings Act, 1981

Drainage Act

Environmental Assessment Act

Environmental Protection Act

Mining Act

Niagara Escarpment Planning and Development Act

Ontario Waste Management Corporation Act, 1981

Ontario Water Resources Act

Pesticides Act

Pits and Quarries Control Act

Planning Act, 1983

Bill 14

An Act to protect and enhance the Quality of Drinking Water in Ontario

Mrs. Grier

1st Reading November 9th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill is intended to protect and enhance drinking water quality in Ontario.

It provides opportunities for public involvement in the making of regulations to set maximum permissible levels for contaminants and other substances in drinking water. These regulations would apply to both public and private water systems.

The operator of a public water system is required to monitor water quality regularly and notify the users of the system as well as the Minister of the Environment of the results. Any user of a private water system may have the water tested by the Ministry of the Environment.

It is an offence for the operator of a public water system to provide water which contravenes the regulations or to fail to comply with monitoring and notice requirements. It is an offence for anyone to pollute a public or private water system.

The Bill permits water users to sue to recover damages for contraventions of the Act and gives any person standing to seek judicial review against the Minister of the Environment.

The Minister is authorized to commission research into matters related to drinking water quality and an advisory council is created to assist the Minister.

Bill 14**1987****An Act to protect and enhance the
Quality of Drinking Water in Ontario**

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1. In this Act,

Interpretation

- (a) “Board” means the Water Review Board;
- (b) “contaminant” means any biological, chemical or physical agent or combination thereof prescribed as a contaminant;
- (c) “Gazette” means *The Ontario Gazette*;
- (d) “Minister” means the Minister of the Environment;
- (e) “prescribed” means prescribed by the regulations;
- (f) “private water system” means any water system that has fewer than fifteen service connections or regularly serves fewer than twenty-five individuals;
- (g) “public water supplier” means a person who operates a public water system;
- (h) “public water system” means any water system that has fifteen or more service connections or regularly serves twenty-five or more individuals;
- (i) “substance” means anything that affects the odour, appearance or taste of drinking water and is prescribed as a substance;
- (j) “user”, when used in connection with a water system or public water supplier, means a person who obtains water from the system or supplier;

- (k) “water system” means any works for the collection, supply and distribution of water that may be used as drinking water.

Purpose

2. The purpose of this Act is the protection and enhancement of drinking water quality throughout Ontario.

DUTIES OF SUPPLIERS

Duties of
supplier

3. Every public water supplier shall,

- (a) conduct complete water tests in accordance with the regulations, monthly or more frequently as may be prescribed by regulation, to establish contaminant and substance levels and compliance with prescribed standards;
- (b) promptly publish the results of all tests conducted under clause (a) in a newspaper that is published in the community where the supplier’s regular users reside;
- (c) supply the results of all tests conducted under clause (a) to every user together with the regular water bill;
- (d) promptly report the results of all tests conducted under clause (a) to the Minister;
- (e) keep full records of all tests conducted under clause (a) and make them available to any person upon request;
- (f) where a test reveals that maximum permitted contaminant levels or maximum permitted substance levels are exceeded or prescribed standards are not adhered to,
 - (i) take immediate steps to cause the water to comply with this Act and the regulations, and
 - (ii) make an alternate supply of safe drinking water available to all users until the main supply complies with this Act and the regulations.

PUBLIC INVOLVEMENT IN REGULATION-MAKING

Draft
regulations
concerning
contaminants

4.—(1) The Minister shall within 180 days after the day this Act comes into force publish in the Gazette a notice set-

ting forth proposed regulations under clause 14 (2) (b) and calling for briefs and submissions in connection therewith.

(2) Any person may within ninety days after the publication of a notice under subsection (1) or (6) require the Board to hold a hearing into any of the proposed regulations by delivering a notice of objection to the Board. Objection

(3) The Board shall hold any hearing required under subsection (2) expeditiously and may consolidate any such hearings where common issues are raised. Hearing

(4) Upon completion of all hearings under subsection (2), the Board shall report its findings and conclusions to the Minister and shall provide a copy of the report to every person who delivered a notice of objection under subsection (2). Report

(5) Regulations under clause 14 (2) (b) shall come into force on or before a day fifteen months after the coming into force of this Act. Effective date

(6) Before further regulations are made or existing regulations are revoked or amended under clause 14 (2) (b), the Minister shall publish in the Gazette a notice setting forth the proposed regulations and calling for briefs and submissions in connection therewith. Further regulations

5.—(1) The Minister shall within 240 days after the day this Act comes into force publish in the Gazette a notice setting forth proposed regulations under clause 14 (2) (c) and calling for briefs and submissions in connection therewith. Draft regulations concerning substances

(2) Regulations under clause 14 (2) (c) shall come into force on or before a day fifteen months after the coming into force of this Act. Effective date

(3) Before further regulations are made or existing regulations are revoked or amended under clause 14 (2) (c), the Minister shall publish in the Gazette a notice setting forth the proposed regulations and calling for briefs and submissions in connection therewith. Further regulations

OFFENCES

6.—(1) No public water supplier shall cause or permit to be supplied to users, Supplying unsafe water

- (a) water containing any contaminant that exceeds the applicable maximum permitted level; or

- (b) water containing any substance that contravenes a prescribed standard or exceeds the applicable maximum permitted level.

Polluting
water
system

(2) No person shall deposit in, add to, emit or discharge into a public water system or a private water system any contaminant or substance so as to cause the water to exceed the maximum permitted level for the contaminant or substance or to contravene a prescribed standard.

Penalties

7. Any person who contravenes this Act or the regulations is guilty of an offence and on conviction is liable to,

- (a) in the case of a contravention of section 6 that relates to a contaminant, a fine not exceeding \$50,000; and
- (b) in the case of any other contravention, a fine not exceeding \$25,000.

PRIVATE REMEDIES

Action for
damages

8.—(1) Any person may, by action, recover damages caused by a contravention of this Act or the regulations from the person who committed the contravention.

Judicial
review

(2) Any person may apply for judicial review of the Minister's exercise or non-exercise of any power or fulfilment or non-fulfilment of any duty conferred or imposed on the Minister by this Act, whether or not the person applying is specially affected or has suffered special damages.

WATER REVIEW BOARD AND WATER ADVISORY COUNCIL

Water
Review
Board
established

9.—(1) The Water Review Board is hereby established and shall consist of not fewer than five persons appointed by the Lieutenant Governor in Council, who shall hold office during pleasure and none of whom shall be members of the public service.

Chairman
and vice-
chairman

(2) The Lieutenant Governor in Council may appoint one of the members of the Board as chairman and another of the members as vice-chairman.

Quorum

(3) Three members of the Board constitute a quorum.

Remuneration

(4) The members of the Board may be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines.

(5) The chairman may authorize one member of the Board to conduct a hearing by the Board and the member has all the powers of the Board for the purpose of the hearing.

One member
may conduct
hearing

(6) The report of such member may be adopted as the decision of the Board by two other members of the Board, one of whom shall be the chairman or vice-chairman or may be otherwise dealt with as the Board considers proper.

Report

10.—(1) The Water Advisory Council is hereby established and shall consist of not fewer than ten and not more than fifteen persons appointed by the Lieutenant Governor in Council, each to hold office for a term of not more than three years.

Water
Advisory
Council
established

(2) The Lieutenant Governor in Council may appoint one of the members of the Council as chairman and another of the members as vice-chairman.

Chairman
and vice-
chairman

(3) The composition of the Council shall be such as to provide for competent and knowledgeable persons in matters relating to drinking water quality.

Members

(4) A retiring member of the Council is eligible for reappointment.

Reappoint-
ments

(5) The members of the Council may be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time may determine.

Remuneration

11. The Water Advisory Council, through its chairman, shall,

Duties of
Council

(a) advise the Minister as to the results of current research related to,

(i) drinking water quality, and

(ii) contaminants and substances and their effects;
and

(b) consider any matter affecting drinking water quality that the Council or the Minister considers advisable and advise the Minister thereon.

STUDIES

12. The Minister shall cause research to be conducted into,

Research

- (a) the causes, diagnosis, treatment, control and prevention of health effects associated with contaminants or substances;
- (b) the quality, quantity and availability of private water supplies;
- (c) the sources of surface and ground water contamination; and
- (d) methods of treating or purifying drinking water.

Testing of
private
water
system

13. The Minister shall, at the request of any user of a private water system, cause the water to be tested in accordance with the regulations to establish contaminant and substance levels and compliance with prescribed standards.

Regulations

14.—(1) The Lieutenant Governor in Council may make such regulations as are advisable to protect and enhance drinking water quality throughout Ontario.

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) designating any biological, chemical or physical agents or combinations thereof as contaminants and prescribing maximum permissible contaminant levels;
- (b) designating anything as a substance, prescribing standards for substances in water and prescribing maximum permissible substance levels;
- (c) respecting procedures for water tests to be conducted under clause 3 (a) and section 13;
- (d) prescribing greater frequencies than monthly for water tests to be conducted under clause 3 (a) and prescribing the circumstances under which such more frequent tests shall be conducted.

Commence-
ment

15. This Act comes into force on the day it receives Royal Assent.

Short title

16. The short title of this Act is the *Ontario Safe Drinking Water Act, 1987*.

Bill 15

An Act to amend the Barristers Act

The Hon. I. Scott
Attorney General

1st Reading November 10th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTIONS 1 and 2. The provisions repealed provide for the appointment of Queen's counsel and their precedence in the courts.

SECTION 3. The common law office of Queen's counsel and the use of the title in the practice of law in Ontario are abolished.

Bill 15

1987

An Act to amend the Barristers Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 2 of the *Barristers Act*, being chapter 38 of the Revised Statutes of Ontario, 1980, is repealed.

2. Subsection 3 (3) of the said Act is repealed.

3. The said Act is amended by adding thereto the following sections:

4.—(1) The office of Her Majesty's counsel learned in the law, or Queen's counsel, is abolished. Q.C.'s
abolished

(2) All letters patent appointing members of the bar of Ontario to be Her Majesty's counsel learned in the law are cancelled. Patents
cancelled

5.—(1) No person shall represent himself or herself to be one of Her Majesty's counsel learned in the law, or Queen's counsel, or other like designation, in the practice of law in Ontario. Use of
designation

(2) Subsection (1) comes into force on the 1st day of July, 1988. Effective
date

4. This Act comes into force on the day it receives Royal Assent. Commence-
ment

5. The short title of this Act is the *Barristers Amendment Act, 1987*. Short title

Bill 16

An Act to encourage the Rehabilitation of Water Delivery Systems in Ontario

Mrs. Marland

1st Reading November 10th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to ensure a clean water supply by promoting and assisting in the rehabilitation of water delivery systems. The Bill would require the Government of Ontario,

- (a) to investigate the question of the need for rehabilitation of water delivery systems used in municipal water systems throughout the Province, considering the desirability of having a clean water supply as well as environmental and health concerns;
- (b) to assist municipalities in determining how most efficiently to effect appropriate rehabilitation of those water delivery systems;
- (c) to assist municipalities in determining the cost of that rehabilitation; and
- (d) to consider giving municipalities the financial assistance necessary to carry out that rehabilitation and assisting them in finding further assistance.

Bill 16**1987****An Act to encourage the Rehabilitation of
Water Delivery Systems in Ontario**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Minister” means the minister of the Crown who is designated by order of the Lieutenant Governor in Council to administer this Act;

“municipality” includes a metropolitan, regional and district municipality and the County of Oxford.

2. The purpose of this Act is to ensure a clean water supply by promoting and assisting in the rehabilitation of water delivery systems.

Purpose of
Act

3. The Lieutenant Governor in Council by order shall designate a minister of the Crown to administer this Act.

Adminis-
tration of
Act

4. The Minister shall cause a thorough investigation to be undertaken to determine the age and quality of water delivery systems throughout the Province, and shall cause periodic studies to be carried out to detect deterioration and anticipated deterioration in those systems and the effects of that deterioration and anticipated deterioration on the provision of a clean water supply, on the health of the public and on the environment.

Investigation

5. Where the Minister determines that as a result of the quality of a water delivery system, a municipality is not delivering a clean water supply or the quality of the water supply is inadequate, considering environmental and health concerns, the Minister shall offer the municipality whatever assistance it requires in developing a plan to determine how most efficiently to effect appropriate rehabilitation of that water delivery system, how much it would cost to effect that rehabilita-

Assistance
in developing
plan

tion and what appropriate sources of funding are available for that cost.

Financial
assistance

6. Where the Minister considers it appropriate to do so, the Minister may provide grants or loans to municipalities to assist them in rehabilitating water delivery systems.

Report

7. The Minister annually shall file a report with the Assembly concerning the action that has been taken under this Act, including,

- (a) the status of water delivery systems throughout the Province and the anticipated cost of rehabilitating those that need rehabilitation;
- (b) what grants and loans have been provided to aid in that rehabilitation; and
- (c) what further rehabilitation needs to be done to carry out the purpose of this Act and what the Minister's plan is with regard to that further rehabilitation.

Commence-
ment

8. This Act comes into force on the day it receives Royal Assent.

Short title

9. The short title of this Act is the *Clean Water Act, 1987*.

Bill 17

An Act to amend the Planning Act, 1983

Mr. Johnston

1st Reading November 10th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. "Nuclear weapons material" is defined.

SECTION 2. This adds to the factors that the Minister must consider in carrying out his or her responsibilities under the Act the protection of the public from the possible threat to its health, social fabric and environment inherent in the production of nuclear weapons material.

SECTION 3. Self-explanatory.

SECTION 4. This requires the approval of the Minister and in the case of land in a local municipality, a zoning by-law properly passed by the Council of that municipality before a person is entitled to establish or convert a facility for or to the production of nuclear weapons material on any parcel of land in Ontario.

SECTION 5. Section 66 of the Act makes it an offence to contravene certain provisions, with maximum fines on conviction of \$20,000 for a first offence and \$10,000 for each day that a contravention continues after the first conviction. The comparable fines for a corporation are \$50,000 and \$25,000 respectively. Section 5 of the Bill makes this provision apply in respect of a person contravening section 4 of the Bill.

Bill 17

1987

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Planning Act, 1983*, being chapter 1, is amended by adding thereto the following clause:

- (ga) “nuclear weapons material” means any item of weaponry, munitions, equipment or specialized supplies or services intended for use primarily in the production, transportation or testing of nuclear weapons or associated equipment or in the deployment of nuclear weapons.

2. Section 2 of the said Act is amended by striking out “and” at the end of clause (h), by adding “and” at the end of clause (i) and by adding thereto the following clause:

- (j) the protection of the public from the possible threat to its health, social fabric and environment inherent in the production of nuclear weapons material.

3. Section 16 of the said Act is amended by adding thereto the following subsection:

- (2) Every official plan shall be deemed to include a provision that no new facilities shall be established for and no facilities shall be converted to the production of nuclear weapons material.

Deemed
provision

4. The said Act is amended by adding thereto the following section:

- 45a.** Unless otherwise approved by the Minister and in the case of land in a local municipality also authorized by a by-law in force under section 34, no person shall establish or convert a facility for or to the production of nuclear weapons material on any parcel of land in Ontario.

Nuclear
weapons
material
production
restricted

5. Subsection 66 (1) of the said Act is amended by inserting after “45” in the first line “45a”.

Commence-
ment

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Planning Amendment Act, 1987*.

Bill 18

An Act to provide for the Conversion of Technologies and Skills used in the Nuclear Weapons Industry to Civilian Uses

Mr. Johnston

1st Reading November 10th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to prepare for the termination of contracts for the production, repair, modification, storage or handling of materials used for nuclear weapons by encouraging the conversion of technologies and skills developed or used in those nuclear weapons contracts to projects that serve the civilian sector and by preparing for the employment of individuals whose jobs may be lost by the termination of those nuclear weapons contracts.

The Bill requires a company that enters into or has a nuclear weapons contract to establish a committee to assist in the preparation for conversion of the plant to civilian purposes and in the retraining of employees. The committees are to be composed of equal numbers of representatives of the company and of the employees and in some circumstances of non-voting representatives from the community.

The Bill provides for benefits to be paid to employees who lose their jobs as a result of the termination of a nuclear weapons contract.

A company that enters into or has a nuclear weapons contract is required to set up a fund to carry out the purposes of the Bill and to put in that fund annually 2.5 per cent of its gross revenue from that contract in that year. Companies and committees are also to seek additional sources of funding to carry out the purposes of the Bill.

The Bill gives the Minister discretion to assist committees and companies in preparing for and carrying out conversion plans and to assist them financially in carrying out their purposes.

The Bill makes it an offence to contravene any provision of the Act and the maximum penalty for a contravention is set at \$10,000 for persons other than corporations and at \$100,000 for corporations.

Bill 18**1987**

**An Act to provide for the Conversion
of Technologies and Skills used in the
Nuclear Weapons Industry to Civilian Uses**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“committee” means an economic conversion planning committee established under section 3;

“conversion plan” means a plan established under section 4;

“facility” means a facility where a nuclear weapons contractor produces, repairs, modifies, stores or handles nuclear weapons material in Ontario;

“fund” means a fund established under section 7;

“Minister” means the Minister of Industry, Trade and Technology;

“nuclear weapons contract” means a contract under which a corporation, agency or other establishment agrees to produce, repair, modify, store or handle nuclear weapons material in Ontario;

“nuclear weapons contractor” or “contractor” means a corporation, agency or other establishment that is engaged in or enters into a nuclear weapons contract;

“nuclear weapons material” means any item of weaponry, munitions, equipment or specialized supplies or services intended for use primarily in the production, transportation or testing of nuclear weapons or associated equipment or in the deployment of nuclear weapons.

Economic
conversion
program

2. A nuclear weapons contractor shall establish and maintain programs in accordance with this Act to prepare for the termination of its nuclear weapons contract by encouraging the conversion of technologies and skills developed or used in that contract to projects that serve the civilian sector and by preparing for the employment of individuals whose jobs may be lost by the termination of that contract.

Economic
conversion
planning
committee
established

3.—(1) A nuclear weapons contractor shall establish an economic conversion planning committee at each of its facilities forthwith upon entering into a nuclear weapons contract and shall cause it to be maintained thereafter.

Idem

(2) Where a nuclear weapons contract has been entered into before this Act comes into force, the contractor shall establish the economic conversion planning committee forthwith upon the coming into force of this Act.

Composition

(3) A committee shall be composed of not fewer than six members, with at least half of the members representing the employees at the facility and the remaining members representing the contractor.

Idem

(4) The members representing the employees at the facility shall be selected from time to time,

(a) by the union bargaining units if the employees or some of them are represented by one or more union bargaining units; or

(b) by representatives democratically elected by the employees if none of them are represented by a union bargaining unit.

Community
represent-
atives

(5) The Minister shall appoint as non-voting members of a committee not more than three persons who live in the municipality in which a facility is located and whose appointments are approved by the municipal council.

Office
space

(6) A nuclear weapons contractor shall provide free of charge to its committee whatever office space, furniture and office supplies that the committee reasonably needs to carry out its functions.

Committee
work

(7) A nuclear weapons contractor shall allow members of the committee to attend meetings and carry on their duties for the committee during the working day and any time spent for the committee shall be computed as working time for the purposes of computing remuneration and benefits.

4.—(1) It is the function of a committee and it has the power to,

Functions
of
committee

- (a) develop and review a comprehensive plan,
 - (i) for converting the facility to productive activities that are acceptable to the contractor and not related to nuclear weapons purposes,
 - (ii) for providing the benefits required by this Act for those employees who lose their jobs as a result of the termination of the nuclear weapons contract, and
 - (iii) for assisting those employees who will not be employed by the contractor after the conversion in finding reasonable alternative employment;
- (b) oversee the implementation of the plan described in clause (a) when the nuclear weapons contract is terminated or completed;
- (c) ensure that the facility provides occupational retraining and re-employment counselling services, or ensure that such retraining and services are provided by an agency outside the facility, for all employees whose jobs are lost, whether temporarily or permanently, as a result of the termination or completion of a nuclear weapons contract;
- (d) assist the contractor in seeking outside sources of funding, as needed, to carry out the purposes of this Act; and
- (e) invest any money held in the fund in investments approved under the *Trustee Act*, and allocate that money in the manner provided for under this Act.

R.S.O. 1980,
c. 512

(2) In developing a conversion plan, the committee shall attempt to maximize the extent to which the personnel required for the efficient operation of the converted facility can be drawn from personnel employed by the facility before the conversion.

Conversion
plans

5.—(1) If a committee is not able to agree on a conversion plan, the committee shall make a report to the Minister containing the recommendations of the representatives of the employees and of the contractor and the opinions of any representatives of the community.

Where no
agreement

Minister
to decide

(2) If the Minister receives a report under subsection (1), he or she shall assist the committee, and where the Minister determines after such assistance that the committee is unable to agree on a conversion plan, the Minister shall assist the committee in whatever way he or she considers appropriate in formulating and carrying out a plan for providing the benefits required under section 6 and assisting employees in obtaining alternative employment.

Benefits
to
employees

R.S.C. 1970,
c. U-2

6. If an employee temporarily or permanently loses a job as a result of the termination of a nuclear weapons contract and the employee is eligible to receive benefits under the *Unemployment Insurance Act* (Canada), the contractor shall pay from the fund to that employee a benefit that when combined with the benefit under the *Unemployment Insurance Act* (Canada) is sufficient to ensure that the employee maintains an income at a level equal to 90 per cent of the employee's annual salary or wages immediately preceding the loss.

Money
for plan

7.—(1) A nuclear weapons contractor shall establish a fund to assist in carrying out a conversion plan and shall pay into the fund annually an amount equal to 2.5 per cent of the contractor's gross revenue from the contract for that year.

Idem

(2) A contractor, with the assistance of the committee, shall attempt to obtain whatever additional money for the fund it considers necessary to carry out the conversion plan.

Management
of fund

(3) The committee shall manage the fund.

Allocation
of money

(4) If there is not enough money in a fund to properly carry out a conversion plan, the committee shall apply what money there is in the fund first for providing the benefits to employees required under section 6, second for assisting employees who lose their jobs in retraining and in obtaining alternative employment, and third in financing any retooling of the facility required to carry out the conversion plan.

Idem

(5) If, after the assistance of the Minister, a committee is unable to agree on a conversion plan, it shall apply the money in the fund first for providing the benefits to employees required under section 6 and second for assisting employees who lose their jobs in retraining and in obtaining alternative employment.

Minister
to assist

8. The Minister may offer whatever assistance he or she considers appropriate to a committee or a contractor, including, without limiting the generality of the foregoing,

- (a) developing and coordinating information concerning,
 - (i) critical issues that should be addressed in formulating a conversion plan,
 - (ii) organizations and individual consultants who might be of assistance to committees in formulating a conversion plan,
 - (iii) the issues involved in the retraining of personnel,
 - (iv) the requirements of programs for retraining of various classes of personnel, and
 - (v) programs that are available for the retraining of various classes of personnel;
- (b) providing financial assistance by way of a grant or a loan to supplement a fund;
- (c) assisting a committee and a contractor in carrying out the conversion plan.

9.—(1) A nuclear weapons contractor shall cause its committee to report to the Minister concerning the development and implementation of its plan within one year after the committee is established and yearly thereafter. Report to Minister

(2) If, after receiving a report, the Minister is not satisfied with the progress of a committee, the Minister shall assist the committee in whatever way he or she considers appropriate in carrying out its functions. Minister to help

10.—(1) A nuclear weapons contractor shall provide to the Minister upon entering into a nuclear weapons contract and annually thereafter such information concerning the nuclear weapons contract as the Minister may require. Report on contract

(2) Where a nuclear weapons contract has been entered into before this Act comes into force, the contractor shall provide the information required under subsection (1) forthwith after the coming into force of this Act and annually thereafter. Transition

11. No action shall be instituted against a member of a committee for an act done in good faith in the execution or intended execution of the person's duty or for an alleged Protection from liability

neglect or default in the execution in good faith of the person's duty.

Offence

12.—(1) A person who contravenes a provision of this Act and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Idem

(2) The maximum fine that may be imposed on a corporation is \$100,000 and not as provided in subsection (1).

Commence-
ment

13. This Act comes into force on the day it receives Royal Assent.

Short title

14. The short title of this Act is the *Nuclear Weapons Economic Conversion Act, 1987*.

Bill 19

An Act to revise the Race Tracks Tax Act

The Hon. B. Grandmaître
Minister of Revenue

1st Reading November 16th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill replaces the *Race Tracks Tax Act* and recognizes and takes into account changes in race track practices and the pari-mutuel betting system. As well, the Bill updates administrative and enforcement provisions. Among the principal features of the new Act proposed by the Bill are the following:

1. Race tracks tax is imposed on every person placing a bet in Ontario under the pari-mutuel system on horse races. The rate of tax remains at 9 per cent on triactor bets and 7 per cent on other bets.
2. The person with whom the bet is placed, referred to as the “operator”, collects the tax at the time the bet is placed, holds the tax in trust for the Crown and is required to remit the tax to the Treasurer of Ontario.
3. The Act contains administrative and enforcement provisions consistent with other Ontario taxing statutes, including,
 - (a) the requirement for the filing of returns by the operator reporting and accounting for the tax collected;
 - (b) the requirement that operators maintain adequate books and records accounting for the tax;
 - (c) the authority for the Minister of Revenue to audit the operator’s books and records to verify the amount of tax collected or collectible under the Act and to issue tax assessments if required;
 - (d) the assessment of administrative penalties payable by an operator who fails to collect the tax as required under the Act, fails to remit the tax or fails to file the required return;
 - (e) the imposition of interest charges on late remittances of tax collected and on overdue assessments;
 - (f) the authority for the Minister of Revenue to take legal action or issue a warrant to enforce collection of amounts payable under the Act;
 - (g) the right of an operator to object to and appeal from an assessment of tax or administrative penalties;
 - (h) the authority to prosecute for the offences of failure to collect tax, failure to file a return, failure to remit tax, the making of false returns and the destruction or alteration of books of account to attempt to evade tax; and
 - (i) the non-disclosure of information obtained by the Ministry of Revenue under the Act except in limited circumstances for specified purposes.
4. The Lieutenant Governor in Council is empowered to make regulations relating to such matters as the method of collection and remittance of tax, the delegation of the administrative powers and duties of the Minister of Revenue under the Act to officials of the Ministry of Revenue and the rate of interest charged under the Act on late payments.

Bill 19

1987

An Act to revise the Race Tracks Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“assessment” includes a reassessment;

“bet” means a bet placed under the system known as pari-mutuel wagering upon a race run at a race meeting;

“Minister” means the Minister of Revenue;

“operator” means a person who,

- (a) operates a race course,
- (b) conducts a race meeting, or
- (c) is in any manner the custodian or depository of money that is staked or deposited in the placing of a bet upon a race run at a race meeting;

“person”, in addition to its meaning in the *Interpretation Act*, includes a partnership, an unincorporated association or club and an agricultural society constituted under the *Agricultural Societies Act*;

R.S.O. 1980,
c. 219

R.S.O. 1980,
c. 14

“prescribed” means prescribed by the regulations;

“race meeting” means a series of horse races conducted by an operator;

“regulations” means the regulations made under this Act;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“triator bet” means a bet in which the person placing the bet undertakes to select in the exact order of finish the first three horses to finish in a race.

Tax rate

2. Every person who places a bet in Ontario upon a race run at a race meeting held in Ontario or elsewhere shall pay to Her Majesty in right of Ontario a tax equal to,

- (a) 9 per cent of the amount of money deposited by the person with the operator at the time he or she places a triactor bet; and
- (b) 7 per cent of the amount of money deposited by the person with the operator at the time he or she places a bet other than a triactor bet.

Tax collection

3.—(1) Every operator shall collect the tax under section 2 as agent of Her Majesty in right of Ontario from the person placing the bet by deducting it from the money deposited with the operator by the person placing the bet before recording and applying the money in the placing of the bet.

Duties of an operator

(2) Every operator shall,

- (a) be deemed to hold all amounts the operator collects under this Act in trust for Her Majesty in right of Ontario;
- (b) keep all amounts collected under this Act separate and apart from the operator's own moneys; and
- (c) remit all amounts collected under this Act to the Treasurer in the manner and at the time prescribed.

Interest on unremitted tax

(3) If an operator fails to remit the tax collected by the operator under this Act to the Treasurer at the time prescribed, the operator is liable to pay to the Treasurer interest on the unremitted tax at the prescribed rate or rates from the day the tax should have been remitted to the day on which the tax is remitted.

Tax return

(4) Every operator required to collect tax under this Act shall submit a return accounting for the tax collected to the Minister for the period and at the time prescribed.

Extended time for making returns

(5) The Minister may enlarge the time for making any return before or after the time prescribed for making it.

(6) No person acting as an agent of Her Majesty in right of Ontario under this section shall thus be made ineligible as a member of the Assembly.

Member of
Assembly

4.—(1) Every operator shall keep records and books of account of such nature and in such manner as is prescribed.

Records and
books of
account

(2) Records and books of account required to be kept under subsection (1) shall be kept,

Location of
records and
books of
account

- (a) at the operator's place of business or residence in Ontario; or
- (b) at a place in Ontario or elsewhere approved in writing by the Minister, under any terms and conditions the Minister may impose.

(3) If, in the opinion of the Minister, an operator fails to keep adequate records and books of account for the purposes of this Act, the Minister may, by notice in writing, require the operator to keep, and the operator shall keep, such records and books of account as are specified in the notice.

Requirement
by Minister
to keep
records

(4) Every operator shall retain all records and books of account, together with every account and voucher necessary to verify the information contained therein, until such time as all prescribed terms or conditions have been met.

Records
retention
period

5.—(1) Any person authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter any premises or place where an operator carries on business or keeps books and records and may,

Investigations

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates to or may relate to the tax imposed by this Act or any return required under this Act;
- (b) examine any property, process or matter that, in his or her opinion, may assist in determining or ascertaining,
 - (i) the information that is or should be in the books and records,
 - (ii) the amount of any tax imposed by this Act, or

(iii) whether or not a return is required under this Act; and

(c) require the operator or the operator's employees or agents to give all reasonable assistance with the audit or examination and to answer all proper questions relating to the audit or examination either orally or, if so required in writing, on oath or by statutory declaration and for that purpose may require that person to attend at the premises or place.

Obstruction

(2) No person shall obstruct or interfere with any person authorized by the Minister under subsection (1) in the exercise of his or her powers under this section.

Demand for information

6. For the purpose of obtaining any information that the Minister considers necessary for the purposes of this Act, the Minister may demand from any person such information as is indicated in a letter delivered personally or sent by registered or certified mail to the person, and the person shall furnish to the Minister all such information that the person has in his or her personal possession or under his or her control, in writing, within such reasonable period of time after the delivery or sending of the letter as is stipulated therein.

Assessment of tax collected

7.—(1) Where an operator fails to submit a return or fails to remit amounts collected under this Act as required under this Act or the regulations, or if the return is not substantiated by the operator's records, the Minister may make an assessment of the tax collected by the operator at any time and such assessed amount shall be deemed to be the tax collected by the operator.

Idem

(2) The Minister is not bound by a return submitted or information furnished by or on behalf of an operator and may, whether or not a return has been submitted, make an assessment of the tax collected by the operator at any time.

Continuing liability

(3) Liability to remit tax collected under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Notice of assessment

(4) Where the Minister makes an assessment under this section or section 8, the Minister shall serve by prepaid mail or by personal service a notice of assessment on the operator and the operator shall, within thirty days of the day of mailing or of personal service of the notice of assessment, remit to the Treasurer all amounts assessed and not previously paid or remitted by the operator, together with any interest thereon

payable under subsection 3 (3), whether or not an objection to or appeal from the assessment is outstanding.

(5) Where in the opinion of the Minister an operator is attempting to avoid payment of an amount assessed under this Act, the Minister may, notwithstanding subsection (4), direct that all amounts set out in the notice of assessment be paid forthwith.

Payment
forthwith

(6) Any assessment made under this section or section 8, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Assessment
valid and
binding

8.—(1) Every operator who fails to collect tax as required under this Act shall pay a penalty, when assessed therefor, equal to the amount of tax that the operator failed to collect.

Penalty for
non-
collection
of tax

(2) Every operator who fails to submit a return or fails to remit the tax collected as required by this Act and the regulations shall pay a penalty, when assessed therefor, equal to the greater of,

Penalty for
failure to
submit return
or to remit
tax

(a) \$25; and

(b) 10 per cent of the amount of tax collected and not remitted.

(3) Where the Minister is satisfied that an operator's failure to collect the tax that should have been collected under this Act is attributable to neglect, carelessness, wilful default or fraud, the Minister may assess a penalty against the operator, in lieu of any penalty that may be assessable under subsection (1), equal to the aggregate of the amount of tax the operator failed to collect and the greater of,

Where tax
not collected
because of
neglect,
fraud, etc.

(a) \$100; and

(b) 25 per cent of the amount of tax the operator failed to collect.

(4) No penalty may be assessed under subsection (1) or (2) more than three years after the date when the tax was required to be collected under this Act, the operator was required to submit a return under this Act and the regulations or the operator was required to remit the tax under this Act, as the case may be.

Penalty
assessment
time limit

Idem

(5) A penalty under subsection (3) may be assessed more than three years after the date when the tax was required to be collected under this Act.

Interest

(6) Any penalty assessed by the Minister under this section shall, if it is not paid within the time provided in subsection 7 (4), bear interest, at such rate as is prescribed, calculated from thirty days after the day of mailing or of personal service of the notice of assessment of the penalty until the day of payment.

Surety bond

9.—(1) The Minister may require an operator to deposit with the Treasurer a bond by way of cash or other security satisfactory to the Minister in an amount to be determined by the Minister.

Disposal of
surety bond

(2) Where an operator who has deposited a bond with the Treasurer under subsection (1) has failed to collect or remit tax as required under this Act and the regulations, the Minister may apply the bond in whole or in part to the amount that should have been collected or remitted and shall forthwith give written notice thereof to the operator by registered mail or personal service.

Recovery of
tax

10.—(1) Upon default of payment by an operator of any amount payable under this Act, the Minister may,

- (a) bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office and may be continued by a successor of the Minister in office as if no change had occurred and shall be tried without a jury;
- (b) issue a warrant directed to the sheriff of any county or district in which any property of the operator is located or situate for the amount owing by the operator, together with interest thereon from the date of the issue of the warrant and the fees and expenses of the sheriff, and the warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court.

Idem

(2) The use of any remedy provided by subsection (1) does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of amounts due under this Act are in addition to any other remedies existing by law, and no

action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise.

11. The provisions of sections 22, 23, 24, 25, 26, 27 and 28 of the *Retail Sales Tax Act* apply with necessary modifications for the purposes of objections and appeals by an operator of assessments of tax or penalties under section 7 or 8 of this Act.

Objections
R.S.O. 1980,
c. 454

12.—(1) Every operator who fails to submit a return to the Minister or to remit the tax collected under this Act to the Treasurer as required by this Act and the regulations is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on conviction to a fine of not less than \$100 and not more than double the amount of tax collected and not remitted.

Offences

(2) Every person who has,

Idem

- (a) made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations made under this Act;
- (b) to evade collection or remittance of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of records or books of account;
- (c) made, assented to or acquiesced in the making of false or deceptive entries or omitted, or assented to or acquiesced in the omission to enter a material particular in records or books of account; or
- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on conviction to a fine of,

- (e) not less than the greater of \$500 and 25 per cent of the tax that was not remitted or was not collected; and
- (f) not more than twice the amount of such tax,

or to imprisonment for a term of not more than two years, or to both fine and imprisonment.

Idem

(3) Every operator who fails to collect the tax imposed by this Act is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on conviction to a fine equal to the amount of tax that should have been collected as determined under subsection (4) and, in addition, an amount not less than \$50 and not more than \$2,000.

Determination of tax

(4) The Minister shall determine the amount of tax referred to in subsection (3) from such information as is available to the Minister and shall issue a certificate as to the amount, but, except where the Minister considers there has been a deliberate evasion of this Act, the Minister shall not consider a period of more than three years in determining the amount of tax that should have been collected.

Certificate of tax

(5) In any prosecution under subsection (3), a certificate signed or purported to be signed by the Minister stating the amount of tax that should have been collected is *prima facie* proof of the amount of tax that should have been collected and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem

(6) Every person who contravenes or fails to comply with,

(a) subsection 4 (1), (2), (3) or (4);

(b) clause 5 (1) (c); or

(c) subsection 5 (2),

of this Act is guilty of an offence and on conviction is liable to a fine of \$50 for each day during which the contravention or failure exists.

General offence

(7) Every person who contravenes, or fails to comply with, any of the provisions of this Act or the regulations is guilty of an offence and, if no other fine is provided for that offence under this Act, is liable upon conviction to a fine of not less than \$100 and not more than \$2,500.

Idem

(8) Every individual who directed, authorized, assented to, acquiesced in or participated in the commission of any act or omission which is an offence under this Act and for which a corporation, agricultural society, association or club would be liable for prosecution under this Act is guilty of an offence and on conviction is liable to the punishment provided for the offence, whether or not the corporation, agricultural society, association or club has been prosecuted or convicted.

(9) Proceedings shall not be commenced in respect of an offence under this Act six years after the date on which the offence was, or is alleged to have been, committed. Limitation

(10) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax under this Act or of any penalty assessed under section 8. Other remedies not affected

13.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall, Confidentiality

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to subsection (3), no person employed by the Government of Ontario shall be required, in connection with any legal proceedings, Non-disclosure

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections (1) and (2) do not apply in respect of, Exceptions

- (a) criminal proceedings under any Act of the Parliament of Canada;
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax or a penalty under this Act.

(4) A person employed by the Government of Ontario may, in the course of his or her duties in connection with the administration or enforcement of this Act, Idem

- (a) communicate or allow to be communicated to an official or authorized person employed by the Gov-

ernment of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and

- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

Copies

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any record or thing obtained by the Minister or on the Minister's behalf for the purposes of this Act to be given to,

- (a) the person from whom the record or thing was obtained; or
- (b) any person,
 - (i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or
 - (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause (a) or (b) or the agent of any such person authorized in writing in that behalf.

Disclosure to
other
jurisdictions

(6) Notwithstanding anything in this or any other Act, the Minister may permit information or a copy of any record or thing obtained by the Minister or on the Minister's behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administering or enforcing an Act of the Parliament of Canada imposing any tax or duty; or

- (b) a minister of the government of any province or territory of Canada or officer or employee employed under that minister, for the purposes of administering or enforcing an Act or ordinance of the Legislature of that province or territory imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of the province or territory, as the case may be, is permitted to give to the Minister information or copies of any record or thing obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that province or territory, as the case may be, in the administration or enforcement of that Act for the purposes of the administration or enforcement of this Act.

(7) Notwithstanding anything in this Act or any other Act, the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act. Idem

(8) Every person, Offence

- (a) who contravenes subsection (1); or
- (b) to whom information has been provided under the authority of subsection (4), (5), (6) or (7) who uses, communicates or allows to be communicated such information for any purposes other than that for which it was provided,

is guilty of an offence and is liable on conviction to a fine of not more than \$200.

14.—(1) The Lieutenant Governor in Council may make regulations, Regulations:
by
Lieutenant
Governor in
Council

- (a) prescribing the method of collection and remittance of the tax imposed under this Act and any condition or requirement affecting the collection or remittance;
- (b) authorizing or requiring the Deputy Minister of Revenue or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;

- (c) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (d) prescribing the rate of interest payable under this Act or the regulations, or a formula for computing that rate, and the method of calculating that interest;
- (e) prescribing the records, books of account and information to be kept and maintained by an operator;
- (f) prescribing anything that by this Act is to be prescribed or is to be determined by the regulations.

by Minister

(2) The Minister may make regulations,

- (a) prescribing, defining or determining anything that the Minister is permitted or required by this Act to prescribe, define or determine;
- (b) prescribing any form required by this Act or the regulations or that, in the Minister's opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.

may be
retroactive

(3) A regulation is, if it so provides, effective with reference to a period before it was filed.

Repeals

15.—(1) The following are repealed:

1. The *Race Tracks Tax Act*, being chapter 428 of the Revised Statutes of Ontario, 1980.
2. The *Race Tracks Tax Amendment Act, 1981*, being chapter 5.

Application
of
R.S.O. 1980,
c. 428

(2) Notwithstanding subsection (1), the *Race Tracks Tax Act* continues to apply in respect of taxes collected or collectable under that Act before the day this Act comes into force.

Commence-
ment

16. This Act comes into force on the day it receives Royal Assent.

Short title

17. The short title of this Act is the *Race Tracks Tax Act, 1987*.

Bill 19

(Chapter 2
Statutes of Ontario, 1988)

An Act to revise the Race Tracks Tax Act

The Hon. B. Grandmaître
Minister of Revenue



<i>1st Reading</i>	November 16th, 1987
<i>2nd Reading</i>	December 9th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 19

1987

An Act to revise the Race Tracks Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“assessment” includes a reassessment;

“bet” means a bet placed under the system known as pari-mutuel wagering upon a race run at a race meeting;

“Minister” means the Minister of Revenue;

“operator” means a person who,

- (a) operates a race course,
- (b) conducts a race meeting, or
- (c) is in any manner the custodian or depository of money that is staked or deposited in the placing of a bet upon a race run at a race meeting;

“person”, in addition to its meaning in the *Interpretation Act*, includes a partnership, an unincorporated association or club and an agricultural society constituted under the *Agricultural Societies Act*;

R.S.O. 1980,
c. 219

R.S.O. 1980,
c. 14

“prescribed” means prescribed by the regulations;

“race meeting” means a series of horse races conducted by an operator;

“regulations” means the regulations made under this Act;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“triator bet” means a bet in which the person placing the bet undertakes to select in the exact order of finish the first three horses to finish in a race.

Tax rate

2. Every person who places a bet in Ontario upon a race run at a race meeting held in Ontario or elsewhere shall pay to Her Majesty in right of Ontario a tax equal to,

- (a) 9 per cent of the amount of money deposited by the person with the operator at the time he or she places a triactor bet; and
- (b) 7 per cent of the amount of money deposited by the person with the operator at the time he or she places a bet other than a triactor bet.

Tax collection

3.—(1) Every operator shall collect the tax under section 2 as agent of Her Majesty in right of Ontario from the person placing the bet by deducting it from the money deposited with the operator by the person placing the bet before recording and applying the money in the placing of the bet.

Duties of an operator

(2) Every operator shall,

- (a) be deemed to hold all amounts the operator collects under this Act in trust for Her Majesty in right of Ontario;
- (b) keep all amounts collected under this Act separate and apart from the operator's own moneys; and
- (c) remit all amounts collected under this Act to the Treasurer in the manner and at the time prescribed.

Interest on unremitted tax

(3) If an operator fails to remit the tax collected by the operator under this Act to the Treasurer at the time prescribed, the operator is liable to pay to the Treasurer interest on the unremitted tax at the prescribed rate or rates from the day the tax should have been remitted to the day on which the tax is remitted.

Tax return

(4) Every operator required to collect tax under this Act shall submit a return accounting for the tax collected to the Minister for the period and at the time prescribed.

Extended time for making returns

(5) The Minister may enlarge the time for making any return before or after the time prescribed for making it.

(6) No person acting as an agent of Her Majesty in right of Ontario under this section shall thus be made ineligible as a member of the Assembly.

Member of
Assembly

4.—(1) Every operator shall keep records and books of account of such nature and in such manner as is prescribed.

Records and
books of
account

(2) Records and books of account required to be kept under subsection (1) shall be kept,

Location of
records and
books of
account

- (a) at the operator's place of business or residence in Ontario; or
- (b) at a place in Ontario or elsewhere approved in writing by the Minister, under any terms and conditions the Minister may impose.

(3) If, in the opinion of the Minister, an operator fails to keep adequate records and books of account for the purposes of this Act, the Minister may, by notice in writing, require the operator to keep, and the operator shall keep, such records and books of account as are specified in the notice.

Requirement
by Minister
to keep
records

(4) Every operator shall retain all records and books of account, together with every account and voucher necessary to verify the information contained therein, until such time as all prescribed terms or conditions have been met.

Records
retention
period

5.—(1) Any person authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter any premises or place where an operator carries on business or keeps books and records and may,

Investigations

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates to or may relate to the tax imposed by this Act or any return required under this Act;
- (b) examine any property, process or matter that, in his or her opinion, may assist in determining or ascertaining,
 - (i) the information that is or should be in the books and records,
 - (ii) the amount of any tax imposed by this Act, or

(iii) whether or not a return is required under this Act; and

- (c) require the operator or the operator's employees or agents to give all reasonable assistance with the audit or examination and to answer all proper questions relating to the audit or examination either orally or, if so required in writing, on oath or by statutory declaration and for that purpose may require that person to attend at the premises or place.

Obstruction (2) No person shall obstruct or interfere with any person authorized by the Minister under subsection (1) in the exercise of his or her powers under this section.

Demand for information

6. For the purpose of obtaining any information that the Minister considers necessary for the purposes of this Act, the Minister may demand from any person such information as is indicated in a letter delivered personally or sent by registered or certified mail to the person, and the person shall furnish to the Minister all such information that the person has in his or her personal possession or under his or her control, in writing, within such reasonable period of time after the delivery or sending of the letter as is stipulated therein.

Assessment of tax collected

7.—(1) Where an operator fails to submit a return or fails to remit amounts collected under this Act as required under this Act or the regulations, or if the return is not substantiated by the operator's records, the Minister may make an assessment of the tax collected by the operator at any time and such assessed amount shall be deemed to be the tax collected by the operator.

Idem

(2) The Minister is not bound by a return submitted or information furnished by or on behalf of an operator and may, whether or not a return has been submitted, make an assessment of the tax collected by the operator at any time.

Continuing liability

(3) Liability to remit tax collected under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Notice of assessment

(4) Where the Minister makes an assessment under this section or section 8, the Minister shall serve by prepaid mail or by personal service a notice of assessment on the operator and the operator shall, within thirty days of the day of mailing or of personal service of the notice of assessment, remit to the Treasurer all amounts assessed and not previously paid or remitted by the operator, together with any interest thereon

payable under subsection 3 (3), whether or not an objection to or appeal from the assessment is outstanding.

(5) Where in the opinion of the Minister an operator is attempting to avoid payment of an amount assessed under this Act, the Minister may, notwithstanding subsection (4), direct that all amounts set out in the notice of assessment be paid forthwith.

Payment
forthwith

(6) Any assessment made under this section or section 8, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Assessment
valid and
binding

8.—(1) Every operator who fails to collect tax as required under this Act shall pay a penalty, when assessed therefor, equal to the amount of tax that the operator failed to collect.

Penalty for
non-
collection
of tax

(2) Every operator who fails to submit a return or fails to remit the tax collected as required by this Act and the regulations shall pay a penalty, when assessed therefor, equal to the greater of,

Penalty for
failure to
submit return
or to remit
tax

(a) \$25; and

(b) 10 per cent of the amount of tax collected and not remitted.

(3) Where the Minister is satisfied that an operator's failure to collect the tax that should have been collected under this Act is attributable to neglect, carelessness, wilful default or fraud, the Minister may assess a penalty against the operator, in lieu of any penalty that may be assessable under subsection (1), equal to the aggregate of the amount of tax the operator failed to collect and the greater of,

Where tax
not collected
because of
neglect,
fraud, etc.

(a) \$100; and

(b) 25 per cent of the amount of tax the operator failed to collect.

(4) No penalty may be assessed under subsection (1) or (2) more than three years after the date when the tax was required to be collected under this Act, the operator was required to submit a return under this Act and the regulations or the operator was required to remit the tax under this Act, as the case may be.

Penalty
assessment
time limit

- Idem (5) A penalty under subsection (3) may be assessed more than three years after the date when the tax was required to be collected under this Act.
- Interest (6) Any penalty assessed by the Minister under this section shall, if it is not paid within the time provided in subsection 7 (4), bear interest, at such rate as is prescribed, calculated from thirty days after the day of mailing or of personal service of the notice of assessment of the penalty until the day of payment.
- Surety bond **9.**—(1) The Minister may require an operator to deposit with the Treasurer a bond by way of cash or other security satisfactory to the Minister in an amount to be determined by the Minister.
- Disposal of surety bond (2) Where an operator who has deposited a bond with the Treasurer under subsection (1) has failed to collect or remit tax as required under this Act and the regulations, the Minister may apply the bond in whole or in part to the amount that should have been collected or remitted and shall forthwith give written notice thereof to the operator by registered mail or personal service.
- Recovery of tax **10.**—(1) Upon default of payment by an operator of any amount payable under this Act, the Minister may,
- (a) bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office and may be continued by a successor of the Minister in office as if no change had occurred and shall be tried without a jury;
 - (b) issue a warrant directed to the sheriff of any county or district in which any property of the operator is located or situate for the amount owing by the operator, together with interest thereon from the date of the issue of the warrant and the fees and expenses of the sheriff, and the warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court.
- Idem (2) The use of any remedy provided by subsection (1) does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of amounts due under this Act are in addition to any other remedies existing by law, and no

action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise.

11. The provisions of sections 22, 23, 24, 25, 26, 27 and 28 of the *Retail Sales Tax Act* apply with necessary modifications for the purposes of objections and appeals by an operator of assessments of tax or penalties under section 7 or 8 of this Act.

Objections
R.S.O. 1980,
c. 454

12.—(1) Every operator who fails to submit a return to the Minister or to remit the tax collected under this Act to the Treasurer as required by this Act and the regulations is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on conviction to a fine of not less than \$100 and not more than double the amount of tax collected and not remitted.

Offences

(2) Every person who has,

Idem

- (a) made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations made under this Act;
- (b) to evade collection or remittance of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of records or books of account;
- (c) made, assented to or acquiesced in the making of false or deceptive entries or omitted, or assented to or acquiesced in the omission to enter a material particular in records or books of account; or
- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on conviction to a fine of,

- (e) not less than the greater of \$500 and 25 per cent of the tax that was not remitted or was not collected; and
- (f) not more than twice the amount of such tax,

or to imprisonment for a term of not more than two years, or to both fine and imprisonment.

Idem

(3) Every operator who fails to collect the tax imposed by this Act is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on conviction to a fine equal to the amount of tax that should have been collected as determined under subsection (4) and, in addition, an amount not less than \$50 and not more than \$2,000.

Determination of tax

(4) The Minister shall determine the amount of tax referred to in subsection (3) from such information as is available to the Minister and shall issue a certificate as to the amount, but, except where the Minister considers there has been a deliberate evasion of this Act, the Minister shall not consider a period of more than three years in determining the amount of tax that should have been collected.

Certificate of tax

(5) In any prosecution under subsection (3), a certificate signed or purported to be signed by the Minister stating the amount of tax that should have been collected is *prima facie* proof of the amount of tax that should have been collected and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem

(6) Every person who contravenes or fails to comply with,

(a) subsection 4 (1), (2), (3) or (4);

(b) clause 5 (1) (c); or

(c) subsection 5 (2),

of this Act is guilty of an offence and on conviction is liable to a fine of \$50 for each day during which the contravention or failure exists.

General offence

(7) Every person who contravenes, or fails to comply with, any of the provisions of this Act or the regulations is guilty of an offence and, if no other fine is provided for that offence under this Act, is liable upon conviction to a fine of not less than \$100 and not more than \$2,500.

Idem

(8) Every individual who directed, authorized, assented to, acquiesced in or participated in the commission of any act or omission which is an offence under this Act and for which a corporation, agricultural society, association or club would be liable for prosecution under this Act is guilty of an offence and on conviction is liable to the punishment provided for the offence, whether or not the corporation, agricultural society, association or club has been prosecuted or convicted.

(9) Proceedings shall not be commenced in respect of an offence under this Act six years after the date on which the offence was, or is alleged to have been, committed. Limitation

(10) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax under this Act or of any penalty assessed under section 8. Other remedies not affected

13.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall, Confidentiality

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(2) Notwithstanding any other Act, but subject to subsection (3), no person employed by the Government of Ontario shall be required, in connection with any legal proceedings, Non-disclosure

(a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or

(b) to produce any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections (1) and (2) do not apply in respect of, Exceptions

(a) criminal proceedings under any Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax or a penalty under this Act.

(4) A person employed by the Government of Ontario may, in the course of his or her duties in connection with the administration or enforcement of this Act, Idem

(a) communicate or allow to be communicated to an official or authorized person employed by the Gov-

ernment of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and

- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any record or thing obtained by or on behalf of the Minister for the purposes of this Act.

Copies

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any record or thing obtained by the Minister or on the Minister's behalf for the purposes of this Act to be given to,

- (a) the person from whom the record or thing was obtained; or
- (b) any person,

- (i) for the purposes of any objection or appeal that has been or may be taken by that person under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or

- (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause (a) or (b) or the agent of any such person authorized in writing in that behalf.

Disclosure to
other
jurisdictions

(6) Notwithstanding anything in this or any other Act, the Minister may permit information or a copy of any record or thing obtained by the Minister or on the Minister's behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administering or enforcing an Act of the Parliament of Canada imposing any tax or duty; or

- (b) a minister of the government of any province or territory of Canada or officer or employee employed under that minister, for the purposes of administering or enforcing an Act or ordinance of the Legislature of that province or territory imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of the province or territory, as the case may be, is permitted to give to the Minister information or copies of any record or thing obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that province or territory, as the case may be, in the administration or enforcement of that Act for the purposes of the administration or enforcement of this Act.

(7) Notwithstanding anything in this Act or any other Act, the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act. Idem

(8) Every person, Offence

- (a) who contravenes subsection (1); or
- (b) to whom information has been provided under the authority of subsection (4), (5), (6) or (7) who uses, communicates or allows to be communicated such information for any purposes other than that for which it was provided,

is guilty of an offence and is liable on conviction to a fine of not more than \$200.

14.—(1) The Lieutenant Governor in Council may make regulations,

Regulations:
by
Lieutenant
Governor in
Council

- (a) prescribing the method of collection and remittance of the tax imposed under this Act and any condition or requirement affecting the collection or remittance;
- (b) authorizing or requiring the Deputy Minister of Revenue or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;

- (c) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (d) prescribing the rate of interest payable under this Act or the regulations, or a formula for computing that rate, and the method of calculating that interest;
- (e) prescribing the records, books of account and information to be kept and maintained by an operator;
- (f) prescribing anything that by this Act is to be prescribed or is to be determined by the regulations.

by Minister

- (2) The Minister may make regulations,
- (a) prescribing, defining or determining anything that the Minister is permitted or required by this Act to prescribe, define or determine;
 - (b) prescribing any form required by this Act or the regulations or that, in the Minister's opinion, will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.

may be
retroactive

- (3) A regulation is, if it so provides, effective with reference to a period before it was filed.

Repeals

15.—(1) The following are repealed:

- 1. The *Race Tracks Tax Act*, being chapter 428 of the Revised Statutes of Ontario, 1980.
- 2. The *Race Tracks Tax Amendment Act, 1981*, being chapter 5.

Application
of
R.S.O. 1980,
c. 428

- (2) Notwithstanding subsection (1), the *Race Tracks Tax Act* continues to apply in respect of taxes collected or collectable under that Act before the day this Act comes into force.

Commence-
ment

16. This Act comes into force on the day it receives Royal Assent.

Short title

17. The short title of this Act is the *Race Tracks Tax Act, 1988*.

Bill 20

An Act to provide an Incentive to Ontario Employees of Small and Medium Sized Corporations to Purchase Newly Issued Shares of their Employer Corporation

The Hon. B. Grandmaître
Minister of Revenue

1st Reading November 16th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to implement the proposal contained in the Treasurer's Budget of May 13th, 1986, to establish an incentive program to encourage employees of small and medium sized corporations to purchase newly-issued shares of their employer. The principal features of the Bill are as follows:

1. Corporations incorporated in Canada which pay at least 25 per cent of their salaries and wages in Ontario and whose gross revenue or total assets, together with the gross revenue or total assets of associated corporations, does not exceed \$50 million in the previous taxation year may apply to register an employee share ownership plan.
2. Corporations otherwise eligible will continue to be eligible until their gross revenue and their total assets, together with the total assets and gross revenue of associated corporations, both exceed \$75 million.
3. The mandatory provisions to be contained in such a plan include the offering of newly-issued voting shares to all eligible employees, a method of valuation that applies to all common shares of the employer corporation, the provision of terms for the purchase, sale, transfer or redemption of those shares, the provision of financial information and advice on the *Securities Act* to employees and the appointment of an independent administrator for the plan who will retain for two years the shares purchased by the employee and will retain out of the proceeds of any sale in that two-year period amounts to be repaid to the Treasurer with respect to grants previously paid to the employee.
4. An annual grant of the lesser of \$300 or 15 per cent of the cost of the shares purchased is available to eligible employees.
5. Full-time or part-time employees who are Ontario residents and who have worked for their employer for at least six months may apply for the grant after they purchase and fully pay for the newly-issued shares unless the employee already owns or the employee is related to any person who already owns 10 per cent or more of any class of shares in the employer corporation.
6. The purchase of the shares must result in new capital being paid to the employer corporation and no grant will be paid where an employee uses the proceeds from the sale of the previously-owned shares to purchase new shares.
7. An eligible corporation may apply for a grant equal to the lesser of \$10,000 and one-third of the prescribed expenditures incurred by the corporation in establishing an employee share ownership plan.
8. An employee group may apply for a grant equal to the lesser of \$5,000 and one-half of the prescribed expenditures incurred by the employees in negotiating, evaluating and implementing the employee share ownership plan.
9. Improperly paid grants may be recovered by the Minister through court action.
10. Administrative provisions relating to audits and requests for information, offences and the keeping of adequate records are similar to those contained in the *Corporations Tax Act*; provisions relating to revocations of employee share ownership plans, the filing of objections and applications to the Supreme Court are similar to those contained in the *Small Business Development Corporations Act*.

Bill 20

1987

**An Act to provide an Incentive to
Ontario Employees of Small and Medium Sized
Corporations to Purchase Newly Issued
Shares of their Employer Corporation**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“administrator” means an administrator under an escrow agreement;

“associated corporations” means corporations that are associated corporations under section 256 of the *Income Tax Act* (Canada) or corporations that would be associated corporations under that section if the corporations had been incorporated in Canada;

R.S.C. 1952,
c. 148

“eligible corporation” means a corporation to which a certificate of eligibility has been issued under section 7;

“eligible employee” means an eligible employee referred to in section 11;

“employee” means an individual who is employed by an eligible corporation on a continuing basis for at least fourteen hours per week;

“employee group” means those employees who have been certified under subsection 4 (4);

“employee share” means a share issued by an eligible corporation that includes the right,

- (a) to vote at all meetings of shareholders, and
- (b) to receive the remaining property of the corporation upon dissolution;

“employee share ownership plan” means an arrangement whereby eligible employees may acquire employee shares in an eligible corporation;

“employee share purchase agreement” means an agreement entered into by an eligible corporation and its employees for the purchase of employee shares by eligible employees containing the requirements set out in subsection 2 (1);

“escrow agreement” means an agreement entered into by an eligible corporation, an administrator and an eligible employee containing the provisions required under subsection 2 (2);

“Minister” means the Minister of Revenue;

“person” includes an employee, an employee group, a corporation and an administrator;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“specified shareholder of the eligible corporation” means a person who is a specified shareholder of the corporation within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada) for the purposes of that Act and any reference to a taxpayer in the definition under that Act shall be read as referring to an employee under this Act;

“taxation year”, in respect of a corporation, means a taxation year of the corporation for the purposes of the *Income Tax Act* (Canada), whether or not the corporation is subject to tax under that Act or is resident in Canada for the purposes of that Act.

R.S.C. 1952,
c. 148

Provisions of
employee
share
purchase
agreement

2.—(1) An employee share purchase agreement shall contain, in addition to any other terms and conditions that are prescribed or that are agreed to by the parties, the following provisions:

1. The employee shares to be purchased in accordance with the agreement shall be offered for purchase to all eligible employees.
2. A method of valuing such employee shares shall be described which shall apply to all common shares and employee shares issued by the eligible corporation.

3. A subscription price for the employee shares shall be specified and shall comply with the method of valuing the shares.
4. The terms and conditions for the purchase, sale, redemption and transfer, as applicable, of the employee shares shall be specified.
5. The employee shares shall be issued to, and be recorded on the share register in the name of, the eligible employee to be held in escrow by the administrator under the escrow agreement.
6. The eligible corporation shall provide to the eligible employees all financial information necessary to fully inform such employees in respect of the purchase, sale, transfer or redemption of employee shares.
7. The eligible corporation shall issue to the administrator an investment confirmation certificate in the prescribed form in respect of the purchase of employee shares.
8. The eligible corporation shall comply with all the provisions of the *Securities Act*, including all notice provisions applicable to the issuance, sale or transfer of shares.
9. The eligible corporation shall advise the eligible employees of the provisions of the *Securities Act* applying to the sale or transfer of shares and applying to insider trading.

R.S.O. 1980,
c. 466

(2) An escrow agreement shall contain, in addition to any other terms and conditions that are prescribed or that are agreed to by the parties, the following provisions:

Provisions of
escrow
agreement

1. All employee shares purchased by an eligible employee shall be held in escrow by the administrator for a period of two years from the date of purchase, or until sold, whichever is the earlier.
2. The administrator shall be a person who is independent of and is not subject to the direction of the eligible corporation or of any eligible employee.
3. The administrator shall deliver to the eligible employee the investment confirmation certificate

issued by the eligible corporation in respect of the employee shares.

4. The administrator shall maintain records of employee shares purchased, sold, transferred or redeemed, in a form acceptable to the Minister and provide to each eligible employee a report of his or her employee shares purchased, sold, transferred or redeemed.
5. All proceeds receivable by an eligible employee on the sale, transfer or redemption of the employee shares held in escrow shall be paid to the administrator.
6. The administrator shall withhold from proceeds received on a sale, transfer or redemption of employee shares paid under paragraph 5 an amount equal to the lesser of the grant paid under section 12 and the amount determined by prescribed formula, and shall remit such amount to the Treasurer of Ontario.
7. The administrator shall file an annual return with the Minister in the manner, at the time and in the form prescribed.

Eligibility to
register
employee
share
ownership
plan

3.—(1) No corporation is eligible to register an employee share ownership plan under this Act unless,

- (a) the corporation is incorporated in Canada;
- (b) the aggregate of all wages and salaries paid in the last taxation year of the corporation that ends before the date of application under subsection 5 (1) to employees of permanent establishments of the corporation in Ontario for the purposes of the *Corporations Tax Act* is not less than 25 per cent of all wages and salaries paid in the year by the corporation;
- (c) either its gross revenue, together with the gross revenue of all associated corporations, or its total assets, together with the total assets of all associated corporations, in the last taxation year ending prior to the date of application under subsection 5 (1) does not exceed \$50,000,000 or such other amount as is prescribed.

R.S.O. 1980,
c. 97

(2) Subject to subsections (3) and (4), for the purposes of subsection (1) and section 10,

Calculation
of gross
revenue and
total assets

(a) the gross revenue of a corporation in a taxation year is the amount equal to the product of,

(i) the gross revenue of the corporation as disclosed in the financial statements of the corporation for that taxation year prepared in accordance with generally accepted accounting principles, and

(ii) the ratio of 365 to the number of days in the taxation year; and

(b) the total assets of a corporation in a taxation year is the amount equal to the sum of,

(i) the total assets as disclosed in the financial statements of the corporation for that taxation year prepared in accordance with generally accepted accounting principles, and

(ii) the amount by which the value of any asset of the corporation has been written down and deducted from its income or undivided profits where such amount is not deductible in the calculation of its taxable income for the current and all prior taxation years under Part I of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148

(3) For the purposes of this section and section 10,

Idem,
associated
corporations

(a) if a corporation is a member of a group of associated corporations during its last taxation year ending before the date of application under subsection 5 (1), the gross revenue of the corporation for the taxation year is the amount by which,

(i) the sum of,

(A) the gross revenue of the corporation determined under clause (2) (a), and

(B) the aggregate of all amounts, each of which is the gross revenue of an associated corporation for its taxation year that ends in the last taxation year of the corporation determined under clause (2) (a),

exceeds,

- (ii) the aggregate of any amounts included in the gross revenue of the corporation or an associated corporation attributable to transactions between the corporations; and
- (b) if a corporation is a member of a group of associated corporations during its last taxation year ending before the date of application under subsection 5 (1), the total assets of the corporation for the taxation year is the amount by which,
 - (i) the sum of,
 - (A) the total assets of the corporation determined under clause (2) (b), and
 - (B) the aggregate of all amounts, each of which is the amount of the total assets of an associated corporation for its taxation year that ends in the last taxation year of the corporation determined under clause (2) (b),

exceeds,

- (ii) the aggregate of,
 - (A) the amounts, if any, included in the total assets of the corporation under subclause (i), representing debts owed at the end of the taxation year to the corporation by an associated corporation and to an associated corporation by the corporation, and
 - (B) the cost to the corporation of any shares of an associated corporation beneficially owned by the corporation at the end of the taxation year and the cost to an associated corporation of any shares of the corporation beneficially owned by the associated corporation at the end of its taxation year.

Idem.
corporations
in
partnership

(4) For the purposes of this section and section 10, a corporation that is a member of a partnership shall include in its gross revenue and in its total assets for a taxation year the percentage of gross revenue and the percentage of the total

assets as disclosed in the financial statements of the partnership for the fiscal period ending in that taxation year prepared in accordance with generally accepted accounting principles that represents the corporation's participation in the profits of the partnership during the fiscal period of the partnership.

4.—(1) Where a corporation intends to deliver an application to register an employee share ownership plan, the corporation shall forward to the Minister, in the prescribed manner, copies of the proposed employee share purchase agreement, the proposed escrow agreement and any other material prescribed to be submitted for review by the Minister.

Where corporation proposes to apply to register plan

(2) The Minister shall forthwith review the proposed agreements and other materials submitted under subsection (1) and advise the corporation whether the agreements and other materials comply with this Act.

Review by Minister

(3) Where employees of the corporation referred to in subsection (1) wish to retain the services of one or more persons to assist the employees in the negotiation, evaluation and implementation of an employee share ownership plan, the employees may make an application in the prescribed form to be certified as an employee group under this Act.

Application for certification as employee group

(4) The Minister shall consider the application made under subsection (3) and may certify those employees as an employee group for the purposes of section 14.

Certification by Minister

(5) Where the Minister has certified employees as an employee group under subsection (4), no further applications may be made under subsection (3).

One employee group only

5.—(1) A corporation may apply to have an employee share ownership plan registered under this Act by delivering to the Minister an application in the prescribed form.

Application for registration of plan

(2) The application shall be accompanied by,

Material to accompany application

- (a) the corporation's financial statements for its last taxation year ending prior to the date of application under subsection (1);
- (b) a certified copy of the corporation's articles of incorporation and any amendments thereto; and
- (c) a true copy of the employee share purchase agreement, the escrow agreement and any other material prescribed to be submitted with the application.

Disentitle-
ment to
registration
of plan

6. A corporation is not entitled to have its employee share ownership plan registered under subsection 7 (1) if,

- (a) the employee share purchase agreement does not comply with subsection 2 (1);
- (b) the escrow agreement does not comply with subsection 2 (2);
- (c) the corporation fails to comply with section 3 or 5; or
- (d) the corporation fails to file any material required by this Act or the regulations.

Registration
of plan and
certificate of
eligibility

7.—(1) Where a corporation satisfies the requirements of this Act, the Minister shall register the corporation's employee share ownership plan and issue a certificate of eligibility in the form prescribed by the Minister.

Register
open to
public
inspection

(2) The Minister shall maintain a register of those eligible corporations who have registered an employee share ownership plan under this Act and the register shall be open for public inspection during normal business hours.

Amendments

8.—(1) Where an eligible corporation proposes to amend its employee share purchase agreement or its escrow agreement or any other prescribed material, it shall forthwith advise the Minister.

Approval,
variation or
rejection by
Minister

(2) Upon receipt of any proposal under subsection (1), the Minister shall forthwith consider such proposal and may approve, vary or reject the proposal, subject to section 17.

Returns

9.—(1) Within 180 days after the end of each taxation year ending after the date of registration under subsection 7 (1), every eligible corporation shall prepare and file with the Minister a return in the prescribed form setting out the information required in such return.

Extension of
time

(2) The Minister may, in his or her discretion, enlarge the time for filing the return required under this section.

Revocation
of
registration
or refusal to
pay grant

10. Subject to section 17, the Minister may revoke the registration of the employee share ownership plan of an eligible corporation or refuse to pay a grant under section 12 where,

- (a) the gross revenue of the eligible corporation, together with the gross revenue of all associated

corporations calculated in accordance with section 3, exceeds \$75,000,000, or such other amount as is prescribed, in a taxation year, and the total assets, together with the total assets of all associated corporations calculated in accordance with section 3, also exceed \$75,000,000, or such other amount as is prescribed, in the same taxation year;

- (b) the eligible corporation ceases to comply with clause 3 (1) (b);
- (c) the eligible corporation, its officers or directors or its shareholders have failed to comply with any provisions of this Act or the regulations or are conducting their business and affairs in a manner that is contrary to the spirit and intent of this Act or for the purpose of obtaining a grant under this Act to which they would not otherwise be entitled;
- (d) the eligible corporation proceeds with any amendments not approved by the Minister under subsection 8 (2); or
- (e) the eligible corporation requests deregistration of its employee share ownership plan.

11.—(1) Where an employee is an eligible employee under subsection (2) and complies with the provisions of this Act, the Minister may make a grant under section 12 to the eligible employee upon application therefor.

Grant to
eligible
employee

(2) An employee shall be an eligible employee if,

Where
employee is
eligible
employee

- (a) the employee was resident in Ontario on the last day of the previous calendar year and on the date the eligible corporation issues employee shares to the employee; and
- (b) the employee has been employed by the eligible corporation during the six months prior to the issue of employee shares to him or her under clause (3) (b).

(3) No grant shall be paid unless,

Condition of
payment of
grant

- (a) the eligible employee has applied to the eligible corporation to purchase employee shares of the eligible corporation in accordance with the employee share purchase agreement;

- (b) the eligible corporation has issued such employee shares in the name of the eligible employee and the shares are held in escrow by the administrator;
- (c) the eligible employee has fully paid for the employee shares; and
- (d) the employee shares are newly issued by the eligible corporation.

Idem

(4) No grant shall be paid where,

- (a) the purchaser of any employee shares is a specified shareholder of the eligible corporation;
- (b) the purchase of any employee share entitles the holder thereof to claim a credit against or deduction from income or income tax under the *Income Tax Act* (Canada); or
- (c) the purchase of any employee share entitles the holder thereof to apply for a grant under the *Small Business Development Corporations Act*.

R.S.C. 1952,
c. 148

R.S.O. 1980,
c. 475

Grants to
eligible
employees

12.—(1) An eligible employee may make an application in the prescribed form for a grant and, subject to section 11 and this section, the Minister may pay a grant equal to the lesser of,

- (a) \$300; and
- (b) 15 per cent of the cost to the eligible employee of employee shares purchased by the eligible employee from the eligible corporation in the calendar year.

Time of
application

(2) No grant shall be paid under subsection (1) unless application therefor is received by the Minister within three years of the date of issue of the employee shares.

Material to
accompany
application

(3) An application under subsection (1) shall be accompanied by,

- (a) an investment confirmation certificate in the prescribed form signed by the secretary and one other authorized signing officer of the eligible corporation that issued the employee shares in respect of which an application for a grant is being made; and
- (b) any additional prescribed material.

(4) Where an applicant for a grant under subsection (1) has previously held and disposed of,

Calculation of cost where shares previously held disposed of, etc.

- (a) common shares of the eligible corporation within six months prior to the purchase of the employee shares from the eligible corporation; or
- (b) employee shares of the eligible corporation with respect to which a grant was paid under this Act which has not been repaid under subsection 15 (1),

the cost to the applicant of the employee shares for the purposes of clause (1) (b) shall be deemed to be the amount by which the cost of the employee shares determined without reference to this subsection exceeds the aggregate of the net proceeds of disposition received or receivable by the applicant on the disposition of all shares referred to in clause (a) or (b).

13.—(1) An eligible corporation may make an application to the Minister for a grant and the Minister may pay to the corporation a grant equal to the lesser of,

Grants to eligible corporations

- (a) \$10,000; and
- (b) one-third of the outlays and expenses as prescribed incurred by the eligible corporation to establish an employee share ownership plan.

(2) No grant shall be paid under subsection (1) unless application therefor is made within one year of the date of issue to the corporation of the certificate of eligibility under subsection 7 (1).

Time of application

(3) Where the Minister has made a grant under subsection (1), no further applications may be made by the eligible corporation under this section.

One grant only

14.—(1) An employee group may make an application to the Minister for a grant and the Minister may pay to the employee group a grant equal to the lesser of,

Grants to employee groups

- (a) \$5,000; and
- (b) one-half of the outlays and expenses as prescribed incurred in advising employees in the negotiation, evaluation and implementation of an employee share ownership plan.

(2) No grant shall be paid under subsection (1) unless application therefor is made within one year of the date of issuance

Time of application

of the certificate of eligibility to the eligible corporation under subsection 7 (1).

One grant only

(3) Where the Minister has made a grant under subsection (1), no further applications may be made by the employee group under this section.

Repayment of grant when shares disposed of

15.—(1) Subject to section 17 and other than in the case of an involuntary disposition prescribed, an eligible employee who disposes of employee shares in respect of which a grant was paid under section 12 within two years from the date of purchase of the employee shares shall repay to the Minister the lesser of,

(a) an amount equal to the grant paid in respect of those employee shares to such eligible employee; and

(b) the amount determined by the prescribed formula.

Amounts paid to Treasurer

(2) All amounts payable to the Minister under subsection (1) shall be retained by the administrator from the proceeds of sale of the employee shares and shall be remitted to the Treasurer of Ontario at the time and in the manner prescribed.

Repayment of grants to which not entitled

16.—(1) Subject to section 17, where a person receives or obtains a grant under this Act to which that person was not entitled or receives or obtains the payment of any amount in excess of the amount of grant to which that person was entitled, the amount of the grant or excess payment, as the case may be, shall be deemed to be a debt due to the Crown and shall be paid forthwith by the person to the Minister.

Demand for repayment

(2) Where the Minister determines that any amount is repayable under subsection (1), the Minister shall, when requesting repayment thereof, serve on the person a demand for repayment together with the reasons therefor.

Recovery

(3) Where a person liable to make a payment under subsection (1) fails to make the payment to the Minister, the amount of the debt may be recovered in any court of competent jurisdiction in proceedings commenced by the Minister at any time.

Acceptance of lesser amount

(4) Notwithstanding subsection (1), if owing to special circumstances it is deemed inequitable to demand the whole amount due under this section, the Minister may accept such lesser amount as he or she considers proper.

Notice of proposal by Minister

17.—(1) Where the Minister proposes,

- (a) to refuse to certify an employee group under subsection 4 (4);
- (b) to refuse to register an employee share ownership plan under subsection 7 (1);
- (c) to vary or reject an amendment under subsection 8 (2);
- (d) to revoke registration under section 10;
- (e) to refuse to make a grant under subsection 12 (1), 13 (1) or 14 (1); or
- (f) to require repayment under subsection 15 (1),

the Minister shall serve notice of the proposal, together with written reasons therefor, on the applicant, registrant, corporation, employee group, eligible employee or other person, as the case may be.

(2) If the Minister fails to register the employee share ownership plan of a corporation under section 7 within six months of application therefor under subsection 5 (1), the Minister shall be deemed to have refused to register the employee share ownership plan for the purposes of clause (1) (b).

Deemed
refusal of
registration

(3) Where a person objects to a proposal under subsection (1) or a demand for repayment under subsection 16 (2) that is served on that person, the person may, within sixty days from the day of mailing of the proposal or demand or from the date upon which the Minister has been deemed to have refused registration under subsection (2), serve on the Minister a notice of objection in the prescribed form setting out the reason for the objection and all relevant facts.

Notice of
objection

(4) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister, but the Minister may accept a notice of objection that was not served in the manner required.

Service of
notice

(5) Where no notice is served under subsection (4), the Minister may proceed to carry out the proposal under subsection (1) or recover the debt stated in the demand under subsection 16 (2).

Where no
notice served

(6) Upon receipt of the notice of objection, the Minister shall forthwith reconsider the proposal or demand and may confirm, vary or abandon such proposal or demand, and the

Reconsider-
ation by
Minister

Minister shall thereupon notify the person making the objection of such action by registered mail.

Where no
appeal

(7) A decision of the Minister under subsection (6) is final and is not subject to appeal except where the decision involves the interpretation of a provision of this Act, or involves an issue solely of law.

Surrender of
certificate of
eligibility

(8) Where no notice was served under subsection (4) or where the Minister's proposal was confirmed under subsection (6), subject to section 18, the eligible corporation shall surrender the certificate of eligibility issued to it under subsection 7 (1).

Application
to judge
where facts
undisputed

18. In any dispute over a decision or action of the Minister under subsection 17 (6), the Minister may, where the dispute involves the interpretation of a provision of this Act, or involves an issue solely of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to a judge of the Supreme Court to have the issue in dispute determined and, if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

Communi-
cation of
information

19.—(1) Except as provided in subsection (2), no person employed in the Government of Ontario shall,

- (a) knowingly communicate or allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

Exception

(2) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by the Minister or on his or her behalf for the purposes of this Act to be given to,

- (a) any official or authorized person employed by the Government of Ontario in the administration and enforcement of this Act;

- (b) the Minister of National Revenue of the Government of Canada or any official or employee employed under that Minister;
- (c) the Treasurer of Ontario and the Minister of Industry, Trade and Technology of the Government of Ontario and any official or employee employed under the Treasurer or Minister; or
- (d) the Ontario Securities Commission or any official employed by the Commission.

20.—(1) Every eligible corporation, administrator and employee group under this Act shall keep such records as may be prescribed by the Minister at its permanent establishment in Ontario, as defined in the *Corporations Tax Act*, or place of business in Ontario, as the case may be, or at such other place of business as is designated by the Minister, in the form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Records

R.S.O. 1980,
c. 97

(2) Where an eligible corporation, administrator or employee group has failed to keep adequate records for the purposes of this Act, the Minister may require the eligible corporation, administrator or employee group to keep such records as may be so required.

Idem

(3) Every eligible corporation, administrator or employee group required by this section to keep records shall, until permission for their disposal is given by the Minister, retain every such record and every account or voucher necessary to verify the information in any such record.

Retention of
records

21.—(1) Any person thereunto authorized by the Minister for any purpose relating to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or records are or should be kept pursuant to this Act, and,

Investigations

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or to the amount of any grant paid or payable under this Act;
- (b) examine any property, process or matter an examination of which may, in his or her opinion, assist

such person in determining the accuracy of any application required by this Act or in ascertaining the information that is or should be in the books and records or in such application, or the amount of any grant paid or payable under this Act; and

- (c) require any person on the premises to give him or her all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or, if so required, in writing, on oath or statutory declaration and, for that purpose, require such person to attend at the premises or place with him or her.

Information

(2) The Minister may, for any purpose relating to the administration and enforcement of this Act, by registered letter or by a demand served personally, require from any eligible corporation or from the president, manager, secretary or any director, agent or representative thereof, or from any other person,

- (a) any information or additional information or a return under section 9 or other return required by the regulations; or
- (b) production, or production on oath, of books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, by registered letter or a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by any agent or officer thereof, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation, or of any agent or officer thereof, for the purpose of determining eligibility or possible eligibility for a grant under this Act, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

Copies

(4) Where a book, record or other document has been examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Revenue may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister or by a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissi-

ble in evidence and has the same probative force as the original document would have had had it been proven in the ordinary way.

(5) No person shall hinder, molest or interfere with any person doing anything that he or she is authorized by this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he or she is unable to do so, do everything he or she is required by this section to do. Compliance

(6) Any officer or employee of the Ministry of Revenue who is authorized by the Minister may administer oaths and take or receive affidavits, declarations and affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits. Administration of oaths

22.—(1) Every person who fails to deliver a return or report as and when required by this Act or the regulations is guilty of an offence and, in addition to any other penalty otherwise provided, on conviction is liable to a fine of not less than \$50 for each day during which the default continues. Offences

(2) Every person who fails to comply with or contravenes section 20 or 21 is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of \$50 for each day during which the default continues. Idem

23. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. Officers, etc., of corporations

24.—(1) Every person who, Offences

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or the regulations;
- (b) knowingly failed to disclose any information that is required to be disclosed and by reason thereof obtained the payment of a grant under this Act to which he or she was not entitled or to which the

person on whose behalf he or she was acting was not entitled;

- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records required to be maintained under this Act;
- (d) knowingly converted to his or her own use a payment of a grant under this Act to which he or she was not entitled; or
- (e) conspires with any person to commit an offence described in clauses (a) to (d),

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or if such person is a corporation to a fine of not more than \$20,000.

Exception

(2) No person is guilty of an offence under subsection (1) if he or she did not know that the statement was false or misleading and in the exercise of due diligence could not have known that the statement was false or misleading.

Limitation

25. Proceedings in respect of an offence against this Act may be commenced not later than six years after the time the subject-matter of the proceedings arose.

Regulations:
by
Lieutenant
Governor in
Council

26.—(1) The Lieutenant Governor in Council may make regulations,

- (a) authorizing or requiring the Deputy Minister or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;
- (b) prescribing additional terms and conditions to be included in an employee share purchase agreement and an escrow agreement;
- (c) prescribing any amount that is greater or lesser than the amount set out in clause 3 (1) (c) or 10 (a);
- (d) providing for the forwarding of draft agreements and other materials to the Minister under subsection 4 (1);

- (e) prescribing additional material to be included in an application under sections 5 and 12;
 - (f) providing for the annual filing of a return by an administrator;
 - (g) prescribing the outlays and expenses referred to in clauses 13 (1) (b) and 14 (1) (b);
 - (h) prescribing the circumstances or situations of involuntary dispositions in which an eligible employee will not be required to repay a grant made under section 12 for the purposes of subsection 15 (1);
 - (i) prescribing the time and manner of the remitting of amounts withheld by an administrator under subsection 15 (2);
 - (j) prescribing the formula to be used in determining the amount of any repayment under clause 15 (1) (b), in lieu of the amount of the repayment referred to in clause 15 (1) (a);
 - (k) defining any word or expression in this Act or the regulations that has not already been expressly defined herein;
 - (l) providing for the payment of interest on any amount repayable under subsection 15 (1).
- (2) The Minister may make regulations, by Minister
- (a) prescribing any form, return or statement to be made under this Act or the regulations or that, in the Minister's opinion, will assist in the administration of this Act, and prescribing how and by whom any form, return or statement shall be completed and what information it shall contain;
 - (b) prescribing, defining or determining anything the Minister is permitted or required by this Act to prescribe, define or determine;
 - (c) prescribing for the purposes of this Act and the regulations the records to be maintained by an eligible corporation, an administrator or an eligible group.
- (3) A regulation is, if it so provides, effective with reference to a period before it was filed. may be retroactive

Commence-
ment

27. This Act shall be deemed to have come into force on the 1st day of January, 1987.

Short title

28. The short title of this Act is the *Employee Share Ownership Plan Act, 1987*.

Bill 20

An Act to provide an Incentive to Ontario Employees of Small and Medium Sized Corporations to Purchase Newly Issued Shares of their Employer Corporation

The Hon. B. Grandmaître
Minister of Revenue



1st Reading November 16th, 1987
2nd Reading December 9th, 1987
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purpose of the Bill is to implement the proposal contained in the Treasurer's Budget of May 13th, 1986, to establish an incentive program to encourage employees of small and medium sized corporations to purchase newly-issued shares of their employer. The principal features of the Bill are as follows:

1. Corporations incorporated in Canada which pay at least 25 per cent of their salaries and wages in Ontario and whose gross revenue or total assets, together with the gross revenue or total assets of associated corporations, does not exceed \$50 million in the previous taxation year may apply to register an employee share ownership plan.
2. Corporations otherwise eligible will continue to be eligible until their gross revenue and their total assets, together with the total assets and gross revenue of associated corporations, both exceed \$75 million.
3. The mandatory provisions to be contained in such a plan include the offering of newly-issued voting shares to all eligible employees, a method of valuation that applies to all common shares of the employer corporation, the provision of terms for the purchase, sale, transfer or redemption of those shares, the provision of financial information and advice on the *Securities Act* to employees and the appointment of an independent administrator for the plan who will retain for two years the shares purchased by the employee and will retain out of the proceeds of any sale in that two-year period amounts to be repaid to the Treasurer with respect to grants previously paid to the employee.
4. An annual grant of the lesser of \$300 or 15 per cent of the cost of the shares purchased is available to eligible employees.
5. Full-time or part-time employees who are Ontario residents and who have worked for their employer for at least six months may apply for the grant after they purchase and fully pay for the newly-issued shares unless the employee already owns or the employee is related to any person who already owns 10 per cent or more of any class of shares in the employer corporation.
6. The purchase of the shares must result in new capital being paid to the employer corporation and no grant will be paid where an employee uses the proceeds from the sale of the previously-owned shares to purchase new shares.
7. An eligible corporation may apply for a grant equal to the lesser of \$10,000 and one-third of the prescribed expenditures incurred by the corporation in establishing an employee share ownership plan.
8. An employee group may apply for a grant equal to the lesser of \$5,000 and one-half of the prescribed expenditures incurred by the employees in negotiating, evaluating and implementing the employee share ownership plan.
9. Improperly paid grants may be recovered by the Minister through court action.
10. Administrative provisions relating to audits and requests for information, offences and the keeping of adequate records are similar to those contained in the *Corporations Tax Act*; provisions relating to revocations of employee share ownership plans, the filing of objections and applications to the Supreme Court are similar to those contained in the *Small Business Development Corporations Act*.

Bill 20**1987**

**An Act to provide an Incentive to
Ontario Employees of Small and Medium Sized
Corporations to Purchase Newly Issued
Shares of their Employer Corporation**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“administrator” means an administrator under an escrow agreement;

“associated corporations” means corporations that are associated corporations under section 256 of the *Income Tax Act* (Canada) or corporations that would be associated corporations under that section if the corporations had been incorporated in Canada;

R.S.C. 1952,
c. 148

“eligible corporation” means a corporation to which a certificate of eligibility has been issued under section 7;

“eligible employee” means an eligible employee referred to in section 11;

“employee” means an individual who is employed by an eligible corporation on a continuing basis for at least fourteen hours per week;

“employee group” means those employees who have been certified under subsection 4 (4);

“employee share” means a share issued by an eligible corporation that includes the right,

- (a) to vote at all meetings of shareholders, and
- (b) to receive the remaining property of the corporation upon dissolution;

“employee share ownership plan” means an arrangement whereby eligible employees may acquire employee shares in an eligible corporation;

“employee share purchase agreement” means an agreement entered into by an eligible corporation and its employees for the purchase of employee shares by eligible employees containing the requirements set out in subsection 2 (1);

“escrow agreement” means an agreement entered into by an eligible corporation, an administrator and an eligible employee containing the provisions required under subsection 2 (2);

“Minister” means the Minister of Revenue;

“person” includes an employee, an employee group, a corporation and an administrator;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

R.S.C. 1952,
c. 148

“specified shareholder of the eligible corporation” means a person who is a specified shareholder of the corporation within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada) for the purposes of that Act and any reference to a taxpayer in the definition under that Act shall be read as referring to an employee under this Act;

“taxation year”, in respect of a corporation, means a taxation year of the corporation for the purposes of the *Income Tax Act* (Canada), whether or not the corporation is subject to tax under that Act or is resident in Canada for the purposes of that Act.

Provisions of
employee
share
purchase
agreement

2.—(1) An employee share purchase agreement shall contain, in addition to any other terms and conditions that are prescribed or that are agreed to by the parties, the following provisions:

1. The employee shares to be purchased in accordance with the agreement shall be offered for purchase to all eligible employees.
2. A method of valuing such employee shares shall be described which shall apply to all common shares and employee shares issued by the eligible corporation.

3. A subscription price for the employee shares shall be specified and shall comply with the method of valuing the shares.
4. The terms and conditions for the purchase, sale, redemption and transfer, as applicable, of the employee shares shall be specified.
5. The employee shares shall be issued to, and be recorded on the share register in the name of, the eligible employee to be held in escrow by the administrator under the escrow agreement.
6. The eligible corporation shall provide to the eligible employees all financial information necessary to fully inform such employees in respect of the purchase, sale, transfer or redemption of employee shares.
7. The eligible corporation shall issue to the administrator an investment confirmation certificate in the prescribed form in respect of the purchase of employee shares.
8. The eligible corporation shall comply with all the provisions of the *Securities Act*, including all notice provisions applicable to the issuance, sale or transfer of shares.
9. The eligible corporation shall advise the eligible employees of the provisions of the *Securities Act* applying to the sale or transfer of shares and applying to insider trading.

R.S.O. 1980,
c. 466

(2) An escrow agreement shall contain, in addition to any other terms and conditions that are prescribed or that are agreed to by the parties, the following provisions:

Provisions of
escrow
agreement

1. All employee shares purchased by an eligible employee shall be held in escrow by the administrator for a period of two years from the date of purchase, or until sold, whichever is the earlier.
2. The administrator shall be a person who is independent of and is not subject to the direction of the eligible corporation or of any eligible employee.
3. The administrator shall deliver to the eligible employee the investment confirmation certificate

issued by the eligible corporation in respect of the employee shares.

4. The administrator shall maintain records of employee shares purchased, sold, transferred or redeemed, in a form acceptable to the Minister and provide to each eligible employee a report of his or her employee shares purchased, sold, transferred or redeemed.
5. All proceeds receivable by an eligible employee on the sale, transfer or redemption of the employee shares held in escrow shall be paid to the administrator.
6. The administrator shall withhold from proceeds received on a sale, transfer or redemption of employee shares paid under paragraph 5 an amount equal to the lesser of the grant paid under section 12 and the amount determined by prescribed formula, and shall remit such amount to the Treasurer of Ontario.
7. The administrator shall file an annual return with the Minister in the manner, at the time and in the form prescribed.

Eligibility to
register
employee
share
ownership
plan

3.—(1) No corporation is eligible to register an employee share ownership plan under this Act unless,

- (a) the corporation is incorporated in Canada;
- (b) the aggregate of all wages and salaries paid in the last taxation year of the corporation that ends before the date of application under subsection 5 (1) to employees of permanent establishments of the corporation in Ontario for the purposes of the *Corporations Tax Act* is not less than 25 per cent of all wages and salaries paid in the year by the corporation;
- (c) either its gross revenue, together with the gross revenue of all associated corporations, or its total assets, together with the total assets of all associated corporations, in the last taxation year ending prior to the date of application under subsection 5 (1) does not exceed \$50,000,000 or such other amount as is prescribed.

(2) Subject to subsections (3) and (4), for the purposes of subsection (1) and section 10,

Calculation
of gross
revenue and
total assets

- (a) the gross revenue of a corporation in a taxation year is the amount equal to the product of,
 - (i) the gross revenue of the corporation as disclosed in the financial statements of the corporation for that taxation year prepared in accordance with generally accepted accounting principles, and
 - (ii) the ratio of 365 to the number of days in the taxation year; and
- (b) the total assets of a corporation in a taxation year is the amount equal to the sum of,
 - (i) the total assets as disclosed in the financial statements of the corporation for that taxation year prepared in accordance with generally accepted accounting principles, and
 - (ii) the amount by which the value of any asset of the corporation has been written down and deducted from its income or undivided profits where such amount is not deductible in the calculation of its taxable income for the current and all prior taxation years under Part I of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148

(3) For the purposes of this section and section 10,

Idem,
associated
corporations

- (a) if a corporation is a member of a group of associated corporations during its last taxation year ending before the date of application under subsection 5 (1), the gross revenue of the corporation for the taxation year is the amount by which,
 - (i) the sum of,
 - (A) the gross revenue of the corporation determined under clause (2) (a), and
 - (B) the aggregate of all amounts, each of which is the gross revenue of an associated corporation for its taxation year that ends in the last taxation year of the corporation determined under clause (2) (a),

exceeds,

- (ii) the aggregate of any amounts included in the gross revenue of the corporation or an associated corporation attributable to transactions between the corporations; and
- (b) if a corporation is a member of a group of associated corporations during its last taxation year ending before the date of application under subsection 5 (1), the total assets of the corporation for the taxation year is the amount by which,
 - (i) the sum of,
 - (A) the total assets of the corporation determined under clause (2) (b), and
 - (B) the aggregate of all amounts, each of which is the amount of the total assets of an associated corporation for its taxation year that ends in the last taxation year of the corporation determined under clause (2) (b),

exceeds,

- (ii) the aggregate of,
 - (A) the amounts, if any, included in the total assets of the corporation under subclause (i), representing debts owed at the end of the taxation year to the corporation by an associated corporation and to an associated corporation by the corporation, and
 - (B) the cost to the corporation of any shares of an associated corporation beneficially owned by the corporation at the end of the taxation year and the cost to an associated corporation of any shares of the corporation beneficially owned by the associated corporation at the end of its taxation year.

Idem,
corporations
in
partnership

(4) For the purposes of this section and section 10, a corporation that is a member of a partnership shall include in its gross revenue and in its total assets for a taxation year the percentage of gross revenue and the percentage of the total

assets as disclosed in the financial statements of the partnership for the fiscal period ending in that taxation year prepared in accordance with generally accepted accounting principles that represents the corporation's participation in the profits of the partnership during the fiscal period of the partnership.

4.—(1) Where a corporation intends to deliver an application to register an employee share ownership plan, the corporation shall forward to the Minister, in the prescribed manner, copies of the proposed employee share purchase agreement, the proposed escrow agreement and any other material prescribed to be submitted for review by the Minister.

Where corporation proposes to apply to register plan

(2) The Minister shall forthwith review the proposed agreements and other materials submitted under subsection (1) and advise the corporation whether the agreements and other materials comply with this Act.

Review by Minister

(3) Where employees of the corporation referred to in subsection (1) wish to retain the services of one or more persons to assist the employees in the negotiation, evaluation and implementation of an employee share ownership plan, the employees may make an application in the prescribed form to be certified as an employee group under this Act.

Application for certification as employee group

(4) The Minister shall consider the application made under subsection (3) and may certify those employees as an employee group for the purposes of section 14.

Certification by Minister

(5) Where the Minister has certified employees as an employee group under subsection (4), no further applications may be made under subsection (3).

One employee group only

5.—(1) A corporation may apply to have an employee share ownership plan registered under this Act by delivering to the Minister an application in the prescribed form.

Application for registration of plan

(2) The application shall be accompanied by,

Material to accompany application

- (a) the corporation's financial statements for its last taxation year ending prior to the date of application under subsection (1);
- (b) a certified copy of the corporation's articles of incorporation and any amendments thereto; and
- (c) a true copy of the employee share purchase agreement, the escrow agreement and any other material prescribed to be submitted with the application.

Disentitle-
ment to
registration
of plan

6. A corporation is not entitled to have its employee share ownership plan registered under subsection 7 (1) if,

- (a) the employee share purchase agreement does not comply with subsection 2 (1);
- (b) the escrow agreement does not comply with subsection 2 (2);
- (c) the corporation fails to comply with section 3 or 5; or
- (d) the corporation fails to file any material required by this Act or the regulations.

Registration
of plan and
certificate of
eligibility

7.—(1) Where a corporation satisfies the requirements of this Act, the Minister shall register the corporation's employee share ownership plan and issue a certificate of eligibility in the form prescribed by the Minister.

Register
open to
public
inspection

(2) The Minister shall maintain a register of those eligible corporations who have registered an employee share ownership plan under this Act and the register shall be open for public inspection during normal business hours.

Amendments

8.—(1) Where an eligible corporation proposes to amend its employee share purchase agreement or its escrow agreement or any other prescribed material, it shall forthwith advise the Minister.

Approval,
variation or
rejection by
Minister

(2) Upon receipt of any proposal under subsection (1), the Minister shall forthwith consider such proposal and may approve, vary or reject the proposal, subject to section 17.

Returns

9.—(1) Within 180 days after the end of each taxation year ending after the date of registration under subsection 7 (1), every eligible corporation shall prepare and file with the Minister a return in the prescribed form setting out the information required in such return.

Extension of
time

(2) The Minister may, in his or her discretion, enlarge the time for filing the return required under this section.

Revocation
of
registration
or refusal to
pay grant

10. Subject to section 17, the Minister may revoke the registration of the employee share ownership plan of an eligible corporation or refuse to pay a grant under section 12 where,

- (a) the gross revenue of the eligible corporation, together with the gross revenue of all associated

corporations calculated in accordance with section 3, exceeds \$75,000,000, or such other amount as is prescribed, in a taxation year, and the total assets, together with the total assets of all associated corporations calculated in accordance with section 3, also exceed \$75,000,000, or such other amount as is prescribed, in the same taxation year;

- (b) the eligible corporation ceases to comply with clause 3 (1) (b);
- (c) the eligible corporation, its officers or directors or its shareholders have failed to comply with any provisions of this Act or the regulations or are conducting their business and affairs in a manner that is contrary to the spirit and intent of this Act or for the purpose of obtaining a grant under this Act to which they would not otherwise be entitled;
- (d) the eligible corporation proceeds with any amendments not approved by the Minister under subsection 8 (2); or
- (e) the eligible corporation requests deregistration of its employee share ownership plan.

11.—(1) Where an employee is an eligible employee under subsection (2) and complies with the provisions of this Act, the Minister may make a grant under section 12 to the eligible employee upon application therefor.

Grant to
eligible
employee

(2) An employee shall be an eligible employee if,

Where
employee is
eligible
employee

- (a) the employee was resident in Ontario on the last day of the previous calendar year and on the date the eligible corporation issues employee shares to the employee; and
- (b) the employee has been employed by the eligible corporation during the six months prior to the issue of employee shares to him or her under clause (3) (b).

(3) No grant shall be paid unless,

Condition of
payment of
grant

- (a) the eligible employee has applied to the eligible corporation to purchase employee shares of the eligible corporation in accordance with the employee share purchase agreement;

- (b) the eligible corporation has issued such employee shares in the name of the eligible employee and the shares are held in escrow by the administrator;
- (c) the eligible employee has fully paid for the employee shares; and
- (d) the employee shares are newly issued by the eligible corporation.

Idem

(4) No grant shall be paid where,

- (a) the purchaser of any employee shares is a specified shareholder of the eligible corporation;
- (b) the purchase of any employee share entitles the holder thereof to claim a credit against or deduction from income or income tax under the *Income Tax Act* (Canada); or
- (c) the purchase of any employee share entitles the holder thereof to apply for a grant under the *Small Business Development Corporations Act*.

R.S.C. 1952,
c. 148

R.S.O. 1980,
c. 475

Grants to
eligible
employees

12.—(1) An eligible employee may make an application in the prescribed form for a grant and, subject to section 11 and this section, the Minister may pay a grant equal to the lesser of,

- (a) \$300; and
- (b) 15 per cent of the cost to the eligible employee of employee shares purchased by the eligible employee from the eligible corporation in the calendar year.

Time of
application

(2) No grant shall be paid under subsection (1) unless application therefor is received by the Minister within three years of the date of issue of the employee shares.

Material to
accompany
application

(3) An application under subsection (1) shall be accompanied by,

- (a) an investment confirmation certificate in the prescribed form signed by the secretary and one other authorized signing officer of the eligible corporation that issued the employee shares in respect of which an application for a grant is being made; and
- (b) any additional prescribed material.

(4) Where an applicant for a grant under subsection (1) has previously held and disposed of,

Calculation of cost where shares previously held disposed of, etc.

- (a) common shares of the eligible corporation within six months prior to the purchase of the employee shares from the eligible corporation; or
- (b) employee shares of the eligible corporation with respect to which a grant was paid under this Act which has not been repaid under subsection 15 (1),

the cost to the applicant of the employee shares for the purposes of clause (1) (b) shall be deemed to be the amount by which the cost of the employee shares determined without reference to this subsection exceeds the aggregate of the net proceeds of disposition received or receivable by the applicant on the disposition of all shares referred to in clause (a) or (b).

13.—(1) An eligible corporation may make an application to the Minister for a grant and the Minister may pay to the corporation a grant equal to the lesser of,

Grants to eligible corporations

- (a) \$10,000; and
- (b) one-third of the outlays and expenses as prescribed incurred by the eligible corporation to establish an employee share ownership plan.

(2) No grant shall be paid under subsection (1) unless application therefor is made within one year of the date of issue to the corporation of the certificate of eligibility under subsection 7 (1).

Time of application

(3) Where the Minister has made a grant under subsection (1), no further applications may be made by the eligible corporation under this section.

One grant only

14.—(1) An employee group may make an application to the Minister for a grant and the Minister may pay to the employee group a grant equal to the lesser of,

Grants to employee groups

- (a) \$5,000; and
- (b) one-half of the outlays and expenses as prescribed incurred in advising employees in the negotiation, evaluation and implementation of an employee share ownership plan.

(2) No grant shall be paid under subsection (1) unless application therefor is made within one year of the date of issuance

Time of application

of the certificate of eligibility to the eligible corporation under subsection 7 (1).

One grant only

(3) Where the Minister has made a grant under subsection (1), no further applications may be made by the employee group under this section.

Repayment of grant when shares disposed of

15.—(1) Subject to section 17 and other than in the case of an involuntary disposition prescribed, an eligible employee who disposes of employee shares in respect of which a grant was paid under section 12 within two years from the date of purchase of the employee shares shall repay to the Minister the lesser of,

(a) an amount equal to the grant paid in respect of those employee shares to such eligible employee; and

(b) the amount determined by the prescribed formula.

Amounts paid to Treasurer

(2) All amounts payable to the Minister under subsection (1) shall be retained by the administrator from the proceeds of sale of the employee shares and shall be remitted to the Treasurer of Ontario at the time and in the manner prescribed.

Repayment of grants to which not entitled

16.—(1) Subject to section 17, where a person receives or obtains a grant under this Act to which that person was not entitled or receives or obtains the payment of any amount in excess of the amount of grant to which that person was entitled, the amount of the grant or excess payment, as the case may be, shall be deemed to be a debt due to the Crown and shall be paid forthwith by the person to the Minister.

Demand for repayment

(2) Where the Minister determines that any amount is repayable under subsection (1), the Minister shall, when requesting repayment thereof, serve on the person a demand for repayment together with the reasons therefor.

Recovery

(3) Where a person liable to make a payment under subsection (1) fails to make the payment to the Minister, the amount of the debt may be recovered in any court of competent jurisdiction in proceedings commenced by the Minister at any time.

Acceptance of lesser amount

(4) Notwithstanding subsection (1), if owing to special circumstances it is deemed inequitable to demand the whole amount due under this section, the Minister may accept such lesser amount as he or she considers proper.

Notice of proposal by Minister

17.—(1) Where the Minister proposes,

- (a) to refuse to certify an employee group under subsection 4 (4);
- (b) to refuse to register an employee share ownership plan under subsection 7 (1);
- (c) to vary or reject an amendment under subsection 8 (2);
- (d) to revoke registration under section 10;
- (e) to refuse to make a grant under subsection 12 (1), 13 (1) or 14 (1); or
- (f) to require repayment under subsection 15 (1),

the Minister shall serve notice of the proposal, together with written reasons therefor, on the applicant, registrant, corporation, employee group, eligible employee or other person, as the case may be.

(2) If the Minister fails to register the employee share ownership plan of a corporation under section 7 within six months of application therefor under subsection 5 (1), the Minister shall be deemed to have refused to register the employee share ownership plan for the purposes of clause (1) (b).

Deemed
refusal of
registration

(3) Where a person objects to a proposal under subsection (1) or a demand for repayment under subsection 16 (2) that is served on that person, the person may, within sixty days from the day of mailing of the proposal or demand or from the date upon which the Minister has been deemed to have refused registration under subsection (2), serve on the Minister a notice of objection in the prescribed form setting out the reason for the objection and all relevant facts.

Notice of
objection

(4) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister, but the Minister may accept a notice of objection that was not served in the manner required.

Service of
notice

(5) Where no notice is served under subsection (4), the Minister may proceed to carry out the proposal under subsection (1) or recover the debt stated in the demand under subsection 16 (2).

Where no
notice served

(6) Upon receipt of the notice of objection, the Minister shall forthwith reconsider the proposal or demand and may confirm, vary or abandon such proposal or demand, and the

Reconsider-
ation by
Minister

Minister shall thereupon notify the person making the objection of such action by registered mail.

Where no
appeal

(7) A decision of the Minister under subsection (6) is final and is not subject to appeal except where the decision involves the interpretation of a provision of this Act, or involves an issue solely of law.

Surrender of
certificate of
eligibility

(8) Where no notice was served under subsection (4) or where the Minister's proposal was confirmed under subsection (6), subject to section 18, the eligible corporation shall surrender the certificate of eligibility issued to it under subsection 7 (1).

Application
to judge
where facts
undisputed

18. In any dispute over a decision or action of the Minister under subsection 17 (6), the Minister may, where the dispute involves the interpretation of a provision of this Act, or involves an issue solely of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to a judge of the Supreme Court to have the issue in dispute determined and, if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

Communi-
cation of
information

19.—(1) Except as provided in subsection (2), no person employed in the Government of Ontario shall,

- (a) knowingly communicate or allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

Exception

(2) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by the Minister or on his or her behalf for the purposes of this Act to be given to,

- (a) any official or authorized person employed by the Government of Ontario in the administration and enforcement of this Act;

- (b) the Minister of National Revenue of the Government of Canada or any official or employee employed under that Minister;
- (c) the Treasurer of Ontario and the Minister of Industry, Trade and Technology of the Government of Ontario and any official or employee employed under the Treasurer or Minister; or
- (d) the Ontario Securities Commission or any official employed by the Commission.

20.—(1) Every eligible corporation, administrator and employee group under this Act shall keep such records as may be prescribed by the Minister at its permanent establishment in Ontario, as defined in the *Corporations Tax Act*, or place of business in Ontario, as the case may be, or at such other place of business as is designated by the Minister, in the form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Records

R.S.O. 1980,
c. 97

(2) Where an eligible corporation, administrator or employee group has failed to keep adequate records for the purposes of this Act, the Minister may require the eligible corporation, administrator or employee group to keep such records as may be so required.

Idem

(3) Every eligible corporation, administrator or employee group required by this section to keep records shall, until permission for their disposal is given by the Minister, retain every such record and every account or voucher necessary to verify the information in any such record.

Retention of
records

21.—(1) Any person thereunto authorized by the Minister for any purpose relating to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or records are or should be kept pursuant to this Act, and,

Investigations

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or to the amount of any grant paid or payable under this Act;
- (b) examine any property, process or matter an examination of which may, in his or her opinion, assist

such person in determining the accuracy of any application required by this Act or in ascertaining the information that is or should be in the books and records or in such application, or the amount of any grant paid or payable under this Act; and

- (c) require any person on the premises to give him or her all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or, if so required, in writing, on oath or statutory declaration and, for that purpose, require such person to attend at the premises or place with him or her.

Information

(2) The Minister may, for any purpose relating to the administration and enforcement of this Act, by registered letter or by a demand served personally, require from any eligible corporation or from the president, manager, secretary or any director, agent or representative thereof, or from any other person,

- (a) any information or additional information or a return under section 9 or other return required by the regulations; or
- (b) production, or production on oath, of books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, by registered letter or a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by any agent or officer thereof, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation, or of any agent or officer thereof, for the purpose of determining eligibility or possible eligibility for a grant under this Act, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

Copies

(4) Where a book, record or other document has been examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Revenue may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister or by a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissi-

ble in evidence and has the same probative force as the original document would have had had it been proven in the ordinary way.

(5) No person shall hinder, molest or interfere with any person doing anything that he or she is authorized by this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he or she is unable to do so, do everything he or she is required by this section to do.

Compliance

(6) Any officer or employee of the Ministry of Revenue who is authorized by the Minister may administer oaths and take or receive affidavits, declarations and affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

Adminis-
tration of
oaths

22.—(1) Every person who fails to deliver a return or report as and when required by this Act or the regulations is guilty of an offence and, in addition to any other penalty otherwise provided, on conviction is liable to a fine of not less than \$50 for each day during which the default continues.

Offences

(2) Every person who fails to comply with or contravenes section 20 or 21 is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of \$50 for each day during which the default continues.

Idem

23. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Officers, etc.,
of
corporations

24.—(1) Every person who,

Offences

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or the regulations;
- (b) knowingly failed to disclose any information that is required to be disclosed and by reason thereof obtained the payment of a grant under this Act to which he or she was not entitled or to which the

person on whose behalf he or she was acting was not entitled;

- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records required to be maintained under this Act;
- (d) knowingly converted to his or her own use a payment of a grant under this Act to which he or she was not entitled; or
- (e) conspires with any person to commit an offence described in clauses (a) to (d),

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or if such person is a corporation to a fine of not more than \$20,000.

Exception

(2) No person is guilty of an offence under subsection (1) if he or she did not know that the statement was false or misleading and in the exercise of due diligence could not have known that the statement was false or misleading.

Limitation

25. Proceedings in respect of an offence against this Act may be commenced not later than six years after the time the subject-matter of the proceedings arose.

Regulations:
by
Lieutenant
Governor in
Council

26.—(1) The Lieutenant Governor in Council may make regulations,

- (a) authorizing or requiring the Deputy Minister or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;
- (b) prescribing additional terms and conditions to be included in an employee share purchase agreement and an escrow agreement;
- (c) prescribing any amount that is greater or lesser than the amount set out in clause 3 (1) (c) or 10 (a);
- (d) providing for the forwarding of draft agreements and other materials to the Minister under subsection 4 (1);

- (e) prescribing additional material to be included in an application under sections 5 and 12;
- (f) providing for the annual filing of a return by an administrator;
- (g) prescribing the outlays and expenses referred to in clauses 13 (1) (b) and 14 (1) (b);
- (h) prescribing the circumstances or situations of involuntary dispositions in which an eligible employee will not be required to repay a grant made under section 12 for the purposes of subsection 15 (1);
- (i) prescribing the time and manner of the remitting of amounts withheld by an administrator under subsection 15 (2);
- (j) prescribing the formula to be used in determining the amount of any repayment under clause 15 (1) (b), in lieu of the amount of the repayment referred to in clause 15 (1) (a);
- (k) defining any word or expression in this Act or the regulations that has not already been expressly defined herein;
- (l) providing for the payment of interest on any amount repayable under subsection 15 (1).

(2) The Minister may make regulations,

by Minister

- (a) prescribing any form, return or statement to be made under this Act or the regulations or that, in the Minister's opinion, will assist in the administration of this Act, and prescribing how and by whom any form, return or statement shall be completed and what information it shall contain;
- (b) prescribing, defining or determining anything the Minister is permitted or required by this Act to prescribe, define or determine;
- (c) prescribing for the purposes of this Act and the regulations the records to be maintained by an eligible corporation, an administrator or an eligible group.

(3) A regulation is, if it so provides, effective with reference to a period before it was filed. may be retroactive


Review

27.—(1) In the fifth year after commencement of this Act, the incentive program established by this Act shall be referred to a Standing Committee of the Legislative Assembly.

Purpose

(2) The Standing Committee shall review the incentive program established by this Act to assess the effectiveness of the incentive program in achieving program objectives.

Report

(3) The Standing Committee shall report its findings to the Legislative Assembly and shall make a recommendation as to whether this Act should be continued unchanged, be amended or be repealed. 

Commence-
ment

28. This Act comes into force on the 1st day of January, 1988. 

Short title

29. The short title of this Act is the *Employee Share Ownership Plan Act, 1987*.

Bill 20

(Chapter 3
Statutes of Ontario, 1988)



An Act to provide an Incentive to Ontario Employees of Small and Medium Sized Corporations to Purchase Newly Issued Shares of their Employer Corporation

The Hon. B. Grandmaître
Minister of Revenue

<i>1st Reading</i>	November 16th, 1987
<i>2nd Reading</i>	December 9th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 20**1987**

**An Act to provide an Incentive to
Ontario Employees of Small and Medium Sized
Corporations to Purchase Newly Issued
Shares of their Employer Corporation**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“administrator” means an administrator under an escrow agreement;

“associated corporations” means corporations that are associated corporations under section 256 of the *Income Tax Act* (Canada) or corporations that would be associated corporations under that section if the corporations had been incorporated in Canada;

R.S.C. 1952,
c. 148

“eligible corporation” means a corporation to which a certificate of eligibility has been issued under section 7;

“eligible employee” means an eligible employee referred to in section 11;

“employee” means an individual who is employed by an eligible corporation on a continuing basis for at least fourteen hours per week;

“employee group” means those employees who have been certified under subsection 4 (4);

“employee share” means a share issued by an eligible corporation that includes the right,

- (a) to vote at all meetings of shareholders, and
- (b) to receive the remaining property of the corporation upon dissolution;

“employee share ownership plan” means an arrangement whereby eligible employees may acquire employee shares in an eligible corporation;

“employee share purchase agreement” means an agreement entered into by an eligible corporation and its employees for the purchase of employee shares by eligible employees containing the requirements set out in subsection 2 (1);

“escrow agreement” means an agreement entered into by an eligible corporation, an administrator and an eligible employee containing the provisions required under subsection 2 (2);

“Minister” means the Minister of Revenue;

“person” includes an employee, an employee group, a corporation and an administrator;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“specified shareholder of the eligible corporation” means a person who is a specified shareholder of the corporation within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada) for the purposes of that Act and any reference to a taxpayer in the definition under that Act shall be read as referring to an employee under this Act;

R.S.C. 1952,
c. 148

“taxation year”, in respect of a corporation, means a taxation year of the corporation for the purposes of the *Income Tax Act* (Canada), whether or not the corporation is subject to tax under that Act or is resident in Canada for the purposes of that Act.

Provisions of
employee
share
purchase
agreement

2.—(1) An employee share purchase agreement shall contain, in addition to any other terms and conditions that are prescribed or that are agreed to by the parties, the following provisions:

1. The employee shares to be purchased in accordance with the agreement shall be offered for purchase to all eligible employees.
2. A method of valuing such employee shares shall be described which shall apply to all common shares and employee shares issued by the eligible corporation.

3. A subscription price for the employee shares shall be specified and shall comply with the method of valuing the shares.
4. The terms and conditions for the purchase, sale, redemption and transfer, as applicable, of the employee shares shall be specified.
5. The employee shares shall be issued to, and be recorded on the share register in the name of, the eligible employee to be held in escrow by the administrator under the escrow agreement.
6. The eligible corporation shall provide to the eligible employees all financial information necessary to fully inform such employees in respect of the purchase, sale, transfer or redemption of employee shares.
7. The eligible corporation shall issue to the administrator an investment confirmation certificate in the prescribed form in respect of the purchase of employee shares.
8. The eligible corporation shall comply with all the provisions of the *Securities Act*, including all notice provisions applicable to the issuance, sale or transfer of shares.
9. The eligible corporation shall advise the eligible employees of the provisions of the *Securities Act* applying to the sale or transfer of shares and applying to insider trading.

R.S.O. 1980,
c. 466

(2) An escrow agreement shall contain, in addition to any other terms and conditions that are prescribed or that are agreed to by the parties, the following provisions:

Provisions of
escrow
agreement

1. All employee shares purchased by an eligible employee shall be held in escrow by the administrator for a period of two years from the date of purchase, or until sold, whichever is the earlier.
2. The administrator shall be a person who is independent of and is not subject to the direction of the eligible corporation or of any eligible employee.
3. The administrator shall deliver to the eligible employee the investment confirmation certificate

issued by the eligible corporation in respect of the employee shares.

4. The administrator shall maintain records of employee shares purchased, sold, transferred or redeemed, in a form acceptable to the Minister and provide to each eligible employee a report of his or her employee shares purchased, sold, transferred or redeemed.
5. All proceeds receivable by an eligible employee on the sale, transfer or redemption of the employee shares held in escrow shall be paid to the administrator.
6. The administrator shall withhold from proceeds received on a sale, transfer or redemption of employee shares paid under paragraph 5 an amount equal to the lesser of the grant paid under section 12 and the amount determined by prescribed formula, and shall remit such amount to the Treasurer of Ontario.
7. The administrator shall file an annual return with the Minister in the manner, at the time and in the form prescribed.

Eligibility to
register
employee
share
ownership
plan

3.—(1) No corporation is eligible to register an employee share ownership plan under this Act unless,

- (a) the corporation is incorporated in Canada;
- (b) the aggregate of all wages and salaries paid in the last taxation year of the corporation that ends before the date of application under subsection 5 (1) to employees of permanent establishments of the corporation in Ontario for the purposes of the *Corporations Tax Act* is not less than 25 per cent of all wages and salaries paid in the year by the corporation;
- (c) either its gross revenue, together with the gross revenue of all associated corporations, or its total assets, together with the total assets of all associated corporations, in the last taxation year ending prior to the date of application under subsection 5 (1) does not exceed \$50,000,000 or such other amount as is prescribed.

(2) Subject to subsections (3) and (4), for the purposes of subsection (1) and section 10,

Calculation
of gross
revenue and
total assets

(a) the gross revenue of a corporation in a taxation year is the amount equal to the product of,

(i) the gross revenue of the corporation as disclosed in the financial statements of the corporation for that taxation year prepared in accordance with generally accepted accounting principles, and

(ii) the ratio of 365 to the number of days in the taxation year; and

(b) the total assets of a corporation in a taxation year is the amount equal to the sum of,

(i) the total assets as disclosed in the financial statements of the corporation for that taxation year prepared in accordance with generally accepted accounting principles, and

(ii) the amount by which the value of any asset of the corporation has been written down and deducted from its income or undivided profits where such amount is not deductible in the calculation of its taxable income for the current and all prior taxation years under Part I of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148

(3) For the purposes of this section and section 10,

Idem,
associated
corporations

(a) if a corporation is a member of a group of associated corporations during its last taxation year ending before the date of application under subsection 5 (1), the gross revenue of the corporation for the taxation year is the amount by which,

(i) the sum of,

(A) the gross revenue of the corporation determined under clause (2) (a), and

(B) the aggregate of all amounts, each of which is the gross revenue of an associated corporation for its taxation year that ends in the last taxation year of the corporation determined under clause (2) (a),

exceeds,

- (ii) the aggregate of any amounts included in the gross revenue of the corporation or an associated corporation attributable to transactions between the corporations; and
- (b) if a corporation is a member of a group of associated corporations during its last taxation year ending before the date of application under subsection 5 (1), the total assets of the corporation for the taxation year is the amount by which,
 - (i) the sum of,
 - (A) the total assets of the corporation determined under clause (2) (b), and
 - (B) the aggregate of all amounts, each of which is the amount of the total assets of an associated corporation for its taxation year that ends in the last taxation year of the corporation determined under clause (2) (b),

exceeds,

- (ii) the aggregate of,
 - (A) the amounts, if any, included in the total assets of the corporation under subclause (i), representing debts owed at the end of the taxation year to the corporation by an associated corporation and to an associated corporation by the corporation, and
 - (B) the cost to the corporation of any shares of an associated corporation beneficially owned by the corporation at the end of the taxation year and the cost to an associated corporation of any shares of the corporation beneficially owned by the associated corporation at the end of its taxation year.

Idem,
corporations
in
partnership

(4) For the purposes of this section and section 10, a corporation that is a member of a partnership shall include in its gross revenue and in its total assets for a taxation year the percentage of gross revenue and the percentage of the total

assets as disclosed in the financial statements of the partnership for the fiscal period ending in that taxation year prepared in accordance with generally accepted accounting principles that represents the corporation's participation in the profits of the partnership during the fiscal period of the partnership.

4.—(1) Where a corporation intends to deliver an application to register an employee share ownership plan, the corporation shall forward to the Minister, in the prescribed manner, copies of the proposed employee share purchase agreement, the proposed escrow agreement and any other material prescribed to be submitted for review by the Minister.

Where corporation proposes to apply to register plan

(2) The Minister shall forthwith review the proposed agreements and other materials submitted under subsection (1) and advise the corporation whether the agreements and other materials comply with this Act.

Review by Minister

(3) Where employees of the corporation referred to in subsection (1) wish to retain the services of one or more persons to assist the employees in the negotiation, evaluation and implementation of an employee share ownership plan, the employees may make an application in the prescribed form to be certified as an employee group under this Act.

Application for certification as employee group

(4) The Minister shall consider the application made under subsection (3) and may certify those employees as an employee group for the purposes of section 14.

Certification by Minister

(5) Where the Minister has certified employees as an employee group under subsection (4), no further applications may be made under subsection (3).

One employee group only

5.—(1) A corporation may apply to have an employee share ownership plan registered under this Act by delivering to the Minister an application in the prescribed form.

Application for registration of plan

(2) The application shall be accompanied by,

Material to accompany application

- (a) the corporation's financial statements for its last taxation year ending prior to the date of application under subsection (1);
- (b) a certified copy of the corporation's articles of incorporation and any amendments thereto; and
- (c) a true copy of the employee share purchase agreement, the escrow agreement and any other material prescribed to be submitted with the application.

Disentitle-
ment to
registration
of plan

6. A corporation is not entitled to have its employee share ownership plan registered under subsection 7 (1) if,

- (a) the employee share purchase agreement does not comply with subsection 2 (1);
- (b) the escrow agreement does not comply with subsection 2 (2);
- (c) the corporation fails to comply with section 3 or 5; or
- (d) the corporation fails to file any material required by this Act or the regulations.

Registration
of plan and
certificate of
eligibility

7.—(1) Where a corporation satisfies the requirements of this Act, the Minister shall register the corporation's employee share ownership plan and issue a certificate of eligibility in the form prescribed by the Minister.

Register
open to
public
inspection

(2) The Minister shall maintain a register of those eligible corporations who have registered an employee share ownership plan under this Act and the register shall be open for public inspection during normal business hours.

Amendments

8.—(1) Where an eligible corporation proposes to amend its employee share purchase agreement or its escrow agreement or any other prescribed material, it shall forthwith advise the Minister.

Approval,
variation or
rejection by
Minister

(2) Upon receipt of any proposal under subsection (1), the Minister shall forthwith consider such proposal and may approve, vary or reject the proposal, subject to section 17.

Returns

9.—(1) Within 180 days after the end of each taxation year ending after the date of registration under subsection 7 (1), every eligible corporation shall prepare and file with the Minister a return in the prescribed form setting out the information required in such return.

Extension of
time

(2) The Minister may, in his or her discretion, enlarge the time for filing the return required under this section.

Revocation
of
registration
or refusal to
pay grant

10. Subject to section 17, the Minister may revoke the registration of the employee share ownership plan of an eligible corporation or refuse to pay a grant under section 12 where,

- (a) the gross revenue of the eligible corporation, together with the gross revenue of all associated

corporations calculated in accordance with section 3, exceeds \$75,000,000, or such other amount as is prescribed, in a taxation year, and the total assets, together with the total assets of all associated corporations calculated in accordance with section 3, also exceed \$75,000,000, or such other amount as is prescribed, in the same taxation year;

- (b) the eligible corporation ceases to comply with clause 3 (1) (b);
- (c) the eligible corporation, its officers or directors or its shareholders have failed to comply with any provisions of this Act or the regulations or are conducting their business and affairs in a manner that is contrary to the spirit and intent of this Act or for the purpose of obtaining a grant under this Act to which they would not otherwise be entitled;
- (d) the eligible corporation proceeds with any amendments not approved by the Minister under subsection 8 (2); or
- (e) the eligible corporation requests deregistration of its employee share ownership plan.

11.—(1) Where an employee is an eligible employee under subsection (2) and complies with the provisions of this Act, the Minister may make a grant under section 12 to the eligible employee upon application therefor.

Grant to
eligible
employee

(2) An employee shall be an eligible employee if,

Where
employee is
eligible
employee

- (a) the employee was resident in Ontario on the last day of the previous calendar year and on the date the eligible corporation issues employee shares to the employee; and
- (b) the employee has been employed by the eligible corporation during the six months prior to the issue of employee shares to him or her under clause (3) (b).

(3) No grant shall be paid unless,

Condition of
payment of
grant

- (a) the eligible employee has applied to the eligible corporation to purchase employee shares of the eligible corporation in accordance with the employee share purchase agreement;

- (b) the eligible corporation has issued such employee shares in the name of the eligible employee and the shares are held in escrow by the administrator;
- (c) the eligible employee has fully paid for the employee shares; and
- (d) the employee shares are newly issued by the eligible corporation.

Idem

(4) No grant shall be paid where,

- (a) the purchaser of any employee shares is a specified shareholder of the eligible corporation;
- (b) the purchase of any employee share entitles the holder thereof to claim a credit against or deduction from income or income tax under the *Income Tax Act* (Canada); or
- (c) the purchase of any employee share entitles the holder thereof to apply for a grant under the *Small Business Development Corporations Act*.

R.S.C. 1952,
c. 148

R.S.O. 1980,
c. 475

Grants to
eligible
employees

12.—(1) An eligible employee may make an application in the prescribed form for a grant and, subject to section 11 and this section, the Minister may pay a grant equal to the lesser of,

- (a) \$300; and
- (b) 15 per cent of the cost to the eligible employee of employee shares purchased by the eligible employee from the eligible corporation in the calendar year.

Time of
application

(2) No grant shall be paid under subsection (1) unless application therefor is received by the Minister within three years of the date of issue of the employee shares.

Material to
accompany
application

(3) An application under subsection (1) shall be accompanied by,

- (a) an investment confirmation certificate in the prescribed form signed by the secretary and one other authorized signing officer of the eligible corporation that issued the employee shares in respect of which an application for a grant is being made; and
- (b) any additional prescribed material.

(4) Where an applicant for a grant under subsection (1) has previously held and disposed of,

Calculation of cost where shares previously held disposed of, etc.

- (a) common shares of the eligible corporation within six months prior to the purchase of the employee shares from the eligible corporation; or
- (b) employee shares of the eligible corporation with respect to which a grant was paid under this Act which has not been repaid under subsection 15 (1),

the cost to the applicant of the employee shares for the purposes of clause (1) (b) shall be deemed to be the amount by which the cost of the employee shares determined without reference to this subsection exceeds the aggregate of the net proceeds of disposition received or receivable by the applicant on the disposition of all shares referred to in clause (a) or (b).

13.—(1) An eligible corporation may make an application to the Minister for a grant and the Minister may pay to the corporation a grant equal to the lesser of,

Grants to eligible corporations

- (a) \$10,000; and
- (b) one-third of the outlays and expenses as prescribed incurred by the eligible corporation to establish an employee share ownership plan.

(2) No grant shall be paid under subsection (1) unless application therefor is made within one year of the date of issue to the corporation of the certificate of eligibility under subsection 7 (1).

Time of application

(3) Where the Minister has made a grant under subsection (1), no further applications may be made by the eligible corporation under this section.

One grant only

14.—(1) An employee group may make an application to the Minister for a grant and the Minister may pay to the employee group a grant equal to the lesser of,

Grants to employee groups

- (a) \$5,000; and
- (b) one-half of the outlays and expenses as prescribed incurred in advising employees in the negotiation, evaluation and implementation of an employee share ownership plan.

(2) No grant shall be paid under subsection (1) unless application therefor is made within one year of the date of issuance

Time of application

of the certificate of eligibility to the eligible corporation under subsection 7 (1).

One grant
only

(3) Where the Minister has made a grant under subsection (1), no further applications may be made by the employee group under this section.

Repayment
of grant
when shares
disposed of

15.—(1) Subject to section 17 and other than in the case of an involuntary disposition prescribed, an eligible employee who disposes of employee shares in respect of which a grant was paid under section 12 within two years from the date of purchase of the employee shares shall repay to the Minister the lesser of,

(a) an amount equal to the grant paid in respect of those employee shares to such eligible employee; and

(b) the amount determined by the prescribed formula.

Amounts
paid to
Treasurer

(2) All amounts payable to the Minister under subsection (1) shall be retained by the administrator from the proceeds of sale of the employee shares and shall be remitted to the Treasurer of Ontario at the time and in the manner prescribed.

Repayment
of grants to
which not
entitled

16.—(1) Subject to section 17, where a person receives or obtains a grant under this Act to which that person was not entitled or receives or obtains the payment of any amount in excess of the amount of grant to which that person was entitled, the amount of the grant or excess payment, as the case may be, shall be deemed to be a debt due to the Crown and shall be paid forthwith by the person to the Minister.

Demand for
repayment

(2) Where the Minister determines that any amount is repayable under subsection (1), the Minister shall, when requesting repayment thereof, serve on the person a demand for repayment together with the reasons therefor.

Recovery

(3) Where a person liable to make a payment under subsection (1) fails to make the payment to the Minister, the amount of the debt may be recovered in any court of competent jurisdiction in proceedings commenced by the Minister at any time.

Acceptance
of lesser
amount

(4) Notwithstanding subsection (1), if owing to special circumstances it is deemed inequitable to demand the whole amount due under this section, the Minister may accept such lesser amount as he or she considers proper.

Notice of
proposal by
Minister

17.—(1) Where the Minister proposes,

- (a) to refuse to certify an employee group under subsection 4 (4);
- (b) to refuse to register an employee share ownership plan under subsection 7 (1);
- (c) to vary or reject an amendment under subsection 8 (2);
- (d) to revoke registration under section 10;
- (e) to refuse to make a grant under subsection 12 (1), 13 (1) or 14 (1); or
- (f) to require repayment under subsection 15 (1),

the Minister shall serve notice of the proposal, together with written reasons therefor, on the applicant, registrant, corporation, employee group, eligible employee or other person, as the case may be.

(2) If the Minister fails to register the employee share ownership plan of a corporation under section 7 within six months of application therefor under subsection 5 (1), the Minister shall be deemed to have refused to register the employee share ownership plan for the purposes of clause (1) (b).

Deemed
refusal of
registration

(3) Where a person objects to a proposal under subsection (1) or a demand for repayment under subsection 16 (2) that is served on that person, the person may, within sixty days from the day of mailing of the proposal or demand or from the date upon which the Minister has been deemed to have refused registration under subsection (2), serve on the Minister a notice of objection in the prescribed form setting out the reason for the objection and all relevant facts.

Notice of
objection

(4) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister, but the Minister may accept a notice of objection that was not served in the manner required.

Service of
notice

(5) Where no notice is served under subsection (4), the Minister may proceed to carry out the proposal under subsection (1) or recover the debt stated in the demand under subsection 16 (2).

Where no
notice served

(6) Upon receipt of the notice of objection, the Minister shall forthwith reconsider the proposal or demand and may confirm, vary or abandon such proposal or demand, and the

Reconsider-
ation by
Minister

Minister shall thereupon notify the person making the objection of such action by registered mail.

Where no
appeal

(7) A decision of the Minister under subsection (6) is final and is not subject to appeal except where the decision involves the interpretation of a provision of this Act, or involves an issue solely of law.

Surrender of
certificate of
eligibility

(8) Where no notice was served under subsection (4) or where the Minister's proposal was confirmed under subsection (6), subject to section 18, the eligible corporation shall surrender the certificate of eligibility issued to it under subsection 7 (1).

Application
to judge
where facts
undisputed

18. In any dispute over a decision or action of the Minister under subsection 17 (6), the Minister may, where the dispute involves the interpretation of a provision of this Act, or involves an issue solely of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to a judge of the Supreme Court to have the issue in dispute determined and, if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined.

Communi-
cation of
information

19.—(1) Except as provided in subsection (2), no person employed in the Government of Ontario shall,

- (a) knowingly communicate or allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

Exception

(2) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by the Minister or on his or her behalf for the purposes of this Act to be given to,

- (a) any official or authorized person employed by the Government of Ontario in the administration and enforcement of this Act;

- (b) the Minister of National Revenue of the Government of Canada or any official or employee employed under that Minister;
- (c) the Treasurer of Ontario and the Minister of Industry, Trade and Technology of the Government of Ontario and any official or employee employed under the Treasurer or Minister; or
- (d) the Ontario Securities Commission or any official employed by the Commission.

20.—(1) Every eligible corporation, administrator and employee group under this Act shall keep such records as may be prescribed by the Minister at its permanent establishment in Ontario, as defined in the *Corporations Tax Act*, or place of business in Ontario, as the case may be, or at such other place of business as is designated by the Minister, in the form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Records

R.S.O. 1980,
c. 97

(2) Where an eligible corporation, administrator or employee group has failed to keep adequate records for the purposes of this Act, the Minister may require the eligible corporation, administrator or employee group to keep such records as may be so required.

Idem

(3) Every eligible corporation, administrator or employee group required by this section to keep records shall, until permission for their disposal is given by the Minister, retain every such record and every account or voucher necessary to verify the information in any such record.

Retention of
records

21.—(1) Any person thereunto authorized by the Minister for any purpose relating to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or records are or should be kept pursuant to this Act, and,

Investigations

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or to the amount of any grant paid or payable under this Act;
- (b) examine any property, process or matter an examination of which may, in his or her opinion, assist

such person in determining the accuracy of any application required by this Act or in ascertaining the information that is or should be in the books and records or in such application, or the amount of any grant paid or payable under this Act; and

- (c) require any person on the premises to give him or her all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or, if so required, in writing, on oath or statutory declaration and, for that purpose, require such person to attend at the premises or place with him or her.

Information

(2) The Minister may, for any purpose relating to the administration and enforcement of this Act, by registered letter or by a demand served personally, require from any eligible corporation or from the president, manager, secretary or any director, agent or representative thereof, or from any other person,

- (a) any information or additional information or a return under section 9 or other return required by the regulations; or
- (b) production, or production on oath, of books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, by registered letter or a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by any agent or officer thereof, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation, or of any agent or officer thereof, for the purpose of determining eligibility or possible eligibility for a grant under this Act, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

Copies

(4) Where a book, record or other document has been examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Revenue may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister or by a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissi-

ble in evidence and has the same probative force as the original document would have had had it been proven in the ordinary way.

(5) No person shall hinder, molest or interfere with any person doing anything that he or she is authorized by this section to do or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he or she is unable to do so, do everything he or she is required by this section to do. Compliance

(6) Any officer or employee of the Ministry of Revenue who is authorized by the Minister may administer oaths and take or receive affidavits, declarations and affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits. Administration of oaths

22.—(1) Every person who fails to deliver a return or report as and when required by this Act or the regulations is guilty of an offence and, in addition to any other penalty otherwise provided, on conviction is liable to a fine of not less than \$50 for each day during which the default continues. Offences

(2) Every person who fails to comply with or contravenes section 20 or 21 is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of \$50 for each day during which the default continues. Idem

23. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. Officers, etc., of corporations

24.—(1) Every person who, Offences

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or the regulations;
- (b) knowingly failed to disclose any information that is required to be disclosed and by reason thereof obtained the payment of a grant under this Act to which he or she was not entitled or to which the

person on whose behalf he or she was acting was not entitled;

- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records required to be maintained under this Act;
- (d) knowingly converted to his or her own use a payment of a grant under this Act to which he or she was not entitled; or
- (e) conspires with any person to commit an offence described in clauses (a) to (d),

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or if such person is a corporation to a fine of not more than \$20,000.

Exception

(2) No person is guilty of an offence under subsection (1) if he or she did not know that the statement was false or misleading and in the exercise of due diligence could not have known that the statement was false or misleading.

Limitation

25. Proceedings in respect of an offence against this Act may be commenced not later than six years after the time the subject-matter of the proceedings arose.

Regulations:
by
Lieutenant
Governor in
Council

26.—(1) The Lieutenant Governor in Council may make regulations,

- (a) authorizing or requiring the Deputy Minister or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;
- (b) prescribing additional terms and conditions to be included in an employee share purchase agreement and an escrow agreement;
- (c) prescribing any amount that is greater or lesser than the amount set out in clause 3 (1) (c) or 10 (a);
- (d) providing for the forwarding of draft agreements and other materials to the Minister under subsection 4 (1);

- (e) prescribing additional material to be included in an application under sections 5 and 12;
- (f) providing for the annual filing of a return by an administrator;
- (g) prescribing the outlays and expenses referred to in clauses 13 (1) (b) and 14 (1) (b);
- (h) prescribing the circumstances or situations of involuntary dispositions in which an eligible employee will not be required to repay a grant made under section 12 for the purposes of subsection 15 (1);
- (i) prescribing the time and manner of the remitting of amounts withheld by an administrator under subsection 15 (2);
- (j) prescribing the formula to be used in determining the amount of any repayment under clause 15 (1) (b), in lieu of the amount of the repayment referred to in clause 15 (1) (a);
- (k) defining any word or expression in this Act or the regulations that has not already been expressly defined herein;
- (l) providing for the payment of interest on any amount repayable under subsection 15 (1).

(2) The Minister may make regulations,

by Minister

- (a) prescribing any form, return or statement to be made under this Act or the regulations or that, in the Minister's opinion, will assist in the administration of this Act, and prescribing how and by whom any form, return or statement shall be completed and what information it shall contain;
- (b) prescribing, defining or determining anything the Minister is permitted or required by this Act to prescribe, define or determine;
- (c) prescribing for the purposes of this Act and the regulations the records to be maintained by an eligible corporation, an administrator or an eligible group.

(3) A regulation is, if it so provides, effective with reference to a period before it was filed.

may be
retroactive

Review

27.—(1) In the fifth year after commencement of this Act, the incentive program established by this Act shall be referred to a Standing Committee of the Legislative Assembly.

Purpose

(2) The Standing Committee shall review the incentive program established by this Act to assess the effectiveness of the incentive program in achieving program objectives.

Report

(3) The Standing Committee shall report its findings to the Legislative Assembly and shall make a recommendation as to whether this Act should be continued unchanged, be amended or be repealed.

Commence-
ment

28. This Act shall be deemed to have come into force on the 1st day of January, 1988.

Short title

29. The short title of this Act is the *Employee Share Ownership Plan Act, 1988*.

1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 21

An Act to amend the Ministry of Revenue Act

The Hon. B. Grandmaître
Minister of Revenue

1st Reading November 16th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to authorize the Minister of Revenue to exchange information on a reciprocal basis with other jurisdictions and to update and make general housekeeping changes to the Act.

SECTION 1. Refers to the Schedule which sets out all statutes presently administered by the Ministry of Revenue.

SECTION 2. Permits the Minister to delegate powers and duties to the Deputy Minister and other Ministry officials, and protects the Deputy Minister and other Ministry officials from being sued personally in respect of carrying out Ministry duties in good faith.

SECTION 3. Permits computer and other non-mechanical reproduction of the Minister's seal.

SECTION 4. Permits the Minister or Deputy Minister to authorize the use of a facsimile signature.

SECTION 5.—Subsection 1. Includes "interest" in the definition of "tax" for remission purposes.

Subsection 2. Clarifies that the tax, fee or interest may be collected if the condition under which remission was granted is not satisfied.

SECTION 6. Permits the Lieutenant Governor in Council, on the recommendation of the Minister, to remit payments that were made as recoverable grants. The remission may be granted in the same manner that is provided for the remission of taxes and penalties under section 8 of the Act.

SECTION 7. Permits the Minister to enter into agreements with any government to provide for the exchange of information obtained under Ministry tax or grant statutes so long as the other government provides information on a reciprocal basis and only uses the information to enforce its own tax or grant statutes.

SECTION 8. Self-explanatory.

Bill 21

1987

An Act to amend the Ministry of Revenue Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 4 of the *Ministry of Revenue Act*, being chapter 287 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

4.—(1) The Minister is responsible for the administration of this Act, the Acts set out in the Schedule and the Acts that are assigned to the Minister by the Legislature or by the Lieutenant Governor in Council.

Adminis-
tration of
Acts

(2) The Lieutenant Governor in Council may by order amend the Schedule.

Amendments
to Schedule

2. The said Act is amended by adding thereto the following sections:

6a.—(1) Where, under this or any other Act, a power is granted to or vested in or a duty is imposed upon the Minister, the Minister may delegate in writing that power or the obligation to perform that duty to the Deputy Minister or to any officer or employee of the Ministry, subject to the conditions set out in the delegation.

Delegation of
powers and
duties

(2) Notwithstanding section 6 of the *Executive Council Act*, a deed or contract signed by a person empowered to do so under a delegation made under subsection (1) has the same effect as if signed by the Minister.

Deeds and
contracts
R.S.O. 1980,
c. 147

6b.—(1) No action or other proceeding for damages shall be instituted against the Deputy Minister, any officer or employee of the Ministry or anyone acting under the authority of the Minister or the Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Protection
from
personal
liability

Crown
liability
R.S.O. 1980,
c. 393

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

3. Subsection 7 (2) of the said Act is amended by striking out “mechanical” in the second line.

4. The said Act is further amended by adding thereto the following section:

Facsimile
signature

7b.—(1) The Minister or Deputy Minister may authorize the use of a facsimile of his or her signature on any document except an affidavit or statutory declaration.

Idem

(2) A facsimile of the signature of the Minister or the Deputy Minister affixed to a document under an authorization made under subsection (1) shall be deemed to be the signature of the Minister or the Deputy Minister, as the case may be.

5.—(1) Clause 8 (1) (b) of the said Act is amended by inserting after “tax” where it appears the second time in the first line “interest”.

(2) Subsection 8 (5) of the said Act is repealed and the following substituted therefor:

Conditional
remission

(5) Where a remission is granted under this section subject to a condition and the condition is not performed, the tax, fee or penalty remitted or to be remitted may be collected or all proceedings may be had as if there had been no remission.

6. The said Act is further amended by adding thereto the following section:

Definition

8a.—(1) In this section, “recoverable grant” means any grant, amount in excess of any grant, increment, amount in excess of any increment, monthly benefit, amount in excess of any monthly benefit, tax credit and interest that is required to be paid or repaid by the recipient to Her Majesty under any of the Acts administered by the Minister.

Remission of
recoverable
grant

(2) Notwithstanding any other Act, the Lieutenant Governor in Council, on the recommendation of the Minister, may, if he or she considers it in the public interest, remit any recoverable grant.

(3) A remission under this section may be total or partial, conditional or unconditional, and may be granted, Remission may be partial, etc.

- (a) before, after or pending any suit or proceeding for the recovery of the recoverable grant in respect of which it is granted;
- (b) before or after any payment or repayment thereof has been made or enforced by process or execution; or
- (c) in any particular case or class of case, before the liability for repayment of the recoverable grant arises.

(4) A remission under this section may be granted, Form of remission

- (a) by forbearing to institute a suit or proceeding for recovery of the recoverable grant;
- (b) by delaying, staying or discontinuing any suit or proceeding already instituted;
- (c) by forbearing to enforce, staying or abandoning any execution or process upon any judgment;
- (d) by the entry of satisfaction upon any judgment; or
- (e) by repaying any sum of money paid to or recovered by the Minister in satisfaction of the recoverable grant.

(5) Where a remission is granted under this section subject to a condition and the condition is not performed, the recoverable grant may be recovered or all proceedings may be had as if there had been no remission. Conditional remission

(6) A conditional remission, upon the performance of the condition, and an unconditional remission have effect as if the remission was made after the recoverable grant in respect of which it was granted had been sued for and recovered. Effect of conditional remission

(7) Remissions granted under this or any other Act may be paid out of the Consolidated Revenue Fund. Payment

(8) A statement of each remission of \$1,000 or more granted under this section shall be reported to the Legislature in the public accounts. Report

7. The said Act is further amended by adding thereto the following section:

Reciprocal
provision of
information

11. Notwithstanding any other Act, the Minister may communicate or allow to be communicated information obtained under an Act that he or she administers to a person employed by any government, or may allow such a person to inspect written statements made under any such Act if,

- (a) the government who employs the person agrees to provide similar information and written statements to the Minister on a reciprocal basis; and
- (b) the information and written statements will not be used by that government for any purpose other than the administration or enforcement of a law that imposes a tax or confers a benefit.

8. The said Act is further amended by adding thereto the following Schedule:

SCHEDULE

Agricultural Development Finance Act

Assessment Act

Corporations Tax Act

Fuel Tax Act, 1981

Gasoline Tax Act

Income Tax Act

Land Transfer Tax Act

Mining Tax Act

Motor Vehicle Fuel Tax Act

Ontario Guaranteed Annual Income Act

Ontario Pensioners Property Tax Assistance Act

Provincial Land Tax Act

Race Tracks Tax Act

Retail Sales Tax Act

Small Business Development Corporations Act

The Succession Duty Act, being chapter 449 of the Revised Statutes of Ontario, 1970, as it continues to apply under *The Succession Duty Repeal Act*, 1979

The Succession Duty Repeal Act, 1979

The Succession Duty Act Supplementary Provisions Act, 1980

Tobacco Tax Act

9. This Act comes into force on the day it receives Royal Assent. Commence-
ment

10. The short title of this Act is the *Ministry of Revenue Amendment Act, 1987*. Short title

Bill 21

(Chapter 4
Statutes of Ontario, 1988)

An Act to amend the Ministry of Revenue Act

The Hon. B. Grandmaître
Minister of Revenue



<i>1st Reading</i>	November 16th, 1987
<i>2nd Reading</i>	December 10th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 21

1987

An Act to amend the Ministry of Revenue Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 4 of the *Ministry of Revenue Act*, being chapter 287 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

4.—(1) The Minister is responsible for the administration of this Act, the Acts set out in the Schedule and the Acts that are assigned to the Minister by the Legislature or by the Lieutenant Governor in Council.

Adminis-
tration of
Acts

(2) The Lieutenant Governor in Council may by order amend the Schedule.

Amendments
to Schedule

2. The said Act is amended by adding thereto the following sections:

6a.—(1) Where, under this or any other Act, a power is granted to or vested in or a duty is imposed upon the Minister, the Minister may delegate in writing that power or the obligation to perform that duty to the Deputy Minister or to any officer or employee of the Ministry, subject to the conditions set out in the delegation.

Delegation of
powers and
duties

(2) Notwithstanding section 6 of the *Executive Council Act*, a deed or contract signed by a person empowered to do so under a delegation made under subsection (1) has the same effect as if signed by the Minister.

Deeds and
contracts
R.S.O. 1980,
c. 147

6b.—(1) No action or other proceeding for damages shall be instituted against the Deputy Minister, any officer or employee of the Ministry or anyone acting under the authority of the Minister or the Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Protection
from
personal
liability

Crown
liability
R.S.O. 1980,
c. 393

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

3. Subsection 7 (2) of the said Act is amended by striking out “mechanical” in the second line.

4. The said Act is further amended by adding thereto the following section:

Facsimile
signature

7b.—(1) The Minister or Deputy Minister may authorize the use of a facsimile of his or her signature on any document except an affidavit or statutory declaration.

Idem

(2) A facsimile of the signature of the Minister or the Deputy Minister affixed to a document under an authorization made under subsection (1) shall be deemed to be the signature of the Minister or the Deputy Minister, as the case may be.

5.—(1) Clause 8 (1) (b) of the said Act is amended by inserting after “tax” where it appears the second time in the first line “interest”.

(2) Subsection 8 (5) of the said Act is repealed and the following substituted therefor:

Conditional
remission

(5) Where a remission is granted under this section subject to a condition and the condition is not performed, the tax, fee or penalty remitted or to be remitted may be collected or all proceedings may be had as if there had been no remission.

6. The said Act is further amended by adding thereto the following section:

Definition

8a.—(1) In this section, “recoverable grant” means any grant, amount in excess of any grant, increment, amount in excess of any increment, monthly benefit, amount in excess of any monthly benefit, tax credit and interest that is required to be paid or repaid by the recipient to Her Majesty under any of the Acts administered by the Minister.

Remission of
recoverable
grant

(2) Notwithstanding any other Act, the Lieutenant Governor in Council, on the recommendation of the Minister, may, if he or she considers it in the public interest, remit any recoverable grant.

(3) A remission under this section may be total or partial, conditional or unconditional, and may be granted, Remission may be partial, etc.

- (a) before, after or pending any suit or proceeding for the recovery of the recoverable grant in respect of which it is granted;
- (b) before or after any payment or repayment thereof has been made or enforced by process or execution; or
- (c) in any particular case or class of case, before the liability for repayment of the recoverable grant arises.

(4) A remission under this section may be granted, Form of remission

- (a) by forbearing to institute a suit or proceeding for recovery of the recoverable grant;
- (b) by delaying, staying or discontinuing any suit or proceeding already instituted;
- (c) by forbearing to enforce, staying or abandoning any execution or process upon any judgment;
- (d) by the entry of satisfaction upon any judgment; or
- (e) by repaying any sum of money paid to or recovered by the Minister in satisfaction of the recoverable grant.

(5) Where a remission is granted under this section subject to a condition and the condition is not performed, the recoverable grant may be recovered or all proceedings may be had as if there had been no remission. Conditional remission

(6) A conditional remission, upon the performance of the condition, and an unconditional remission have effect as if the remission was made after the recoverable grant in respect of which it was granted had been sued for and recovered. Effect of conditional remission

(7) Remissions granted under this or any other Act may be paid out of the Consolidated Revenue Fund. Payment

(8) A statement of each remission of \$1,000 or more granted under this section shall be reported to the Legislature in the public accounts. Report

7. The said Act is further amended by adding thereto the following section:

Reciprocal
provision of
information

11. Notwithstanding any other Act, the Minister may communicate or allow to be communicated information obtained under an Act that he or she administers to a person employed by any government, or may allow such a person to inspect written statements made under any such Act if,

- (a) the government who employs the person agrees to provide similar information and written statements to the Minister on a reciprocal basis; and
- (b) the information and written statements will not be used by that government for any purpose other than the administration or enforcement of a law that imposes a tax or confers a benefit.

8. The said Act is further amended by adding thereto the following Schedule:

SCHEDULE

Agricultural Development Finance Act

Assessment Act

Corporations Tax Act

Fuel Tax Act, 1981

Gasoline Tax Act

Income Tax Act

Land Transfer Tax Act

Mining Tax Act

Motor Vehicle Fuel Tax Act

Ontario Guaranteed Annual Income Act

Ontario Pensioners Property Tax Assistance Act

Provincial Land Tax Act

Race Tracks Tax Act

Retail Sales Tax Act

Small Business Development Corporations Act

The Succession Duty Act, being chapter 449 of the Revised Statutes of Ontario, 1970, as it continues to apply under *The Succession Duty Repeal Act*, 1979

The Succession Duty Repeal Act, 1979

The Succession Duty Act Supplementary Provisions Act, 1980

Tobacco Tax Act

9. This Act comes into force on the day it receives Royal Assent. Commence-
ment

10. The short title of this Act is the *Ministry of Revenue Amendment Act, 1988*. Short title

Bill 22

An Act to regulate Motor Vehicle Repairs

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading November 16th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to provide protection to motor vehicle owners whose vehicles require repairs. The main features of the Bill are as follows:

1. Written estimates must be provided on request. (Section 2)
2. Customers must be told in advance if there is a fee for an estimate and the amount of the fee. (Section 3)
3. No work may be charged for unless there was authorization for the work. (Subsection 4 (1))
4. Actual costs may not exceed an estimate by more than 10 per cent. (Subsection 4 (2))
5. Parts must be returned on request. (Section 7)
6. Specific warranties are set out. (Section 9)
7. Charging more for work that is covered by insurance is prohibited. (Section 10)
8. Repairers are barred from collecting illegal charges. (Section 11)

Bill 22

1987

An Act to regulate Motor Vehicle Repairs

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“customer” means a person who contacts a repairer for an estimate, work or repairs to a vehicle;

“estimate” means an estimate of the total cost of work on and repairs for a vehicle;

“repairer” means a person who works on or repairs vehicles for compensation;

“vehicle” means a motor vehicle as defined in the *Highway Traffic Act*. R.S.O. 1980,
c. 198

2.—(1) Where a customer asks for a written estimate, no repairer shall charge for any work on or repairs to a vehicle unless the repairer first gives the customer an estimate, in writing, of the cost of the work on or repairs to the customer’s vehicle. Estimates

(2) An estimate given under subsection (1) must include, Idem

- (a) the name and address of both the customer and repairer;
- (b) the make, model, vehicle identification number and licence number of the vehicle;
- (c) a description of the work or repairs to be made to the vehicle;
- (d) the parts to be installed and a statement as to whether they will be new, used or reconditioned;
- (e) the price of the parts to be installed;

- (f) the number of hours to be billed, the hourly rate and the total cost of labour;
- (g) the total amount to be billed; and
- (h) the date the estimate is given and the date after which it ceases to apply.

Estimate fee **3.—**(1) No person shall charge a fee for an estimate unless the customer is told in advance that a fee will be charged and the amount of the fee.

Idem (2) A fee for an estimate shall be deemed to include the cost of diagnostic time and the cost of reassembling the vehicle and the cost of parts that will be damaged and must be replaced when reassembling if the work or repairs are not authorized by the customer.

Idem (3) No person shall charge a fee for an estimate if the work or repairs in question are authorized and carried out.

Authorization required **4.—**(1) No person shall charge for any work on or repairs to a vehicle unless the customer authorizes the work or repairs.

Idem (2) No person shall charge, for work or repairs for which an estimate was given, an amount that exceeds the estimate by more than 10 per cent.

Authorization by telephone **5.** An authorization for work or repairs that is given by telephone is not effective for the purpose of this Act unless the person receiving the authorization records,

- (a) the name and telephone number of the person giving the authorization; and
- (b) the date and time of the authorization.

Disclosure **6.** Every repairer shall post signs as prescribed by the regulations in a conspicuous place clearly visible to prospective customers stating,

- (a) that written estimates are available on request;
- (b) whether there is a charge for an estimate;
- (c) the cost of computing labour charges including,
 - (i) the hourly rate,

- (ii) whether a rate predetermining the length of time required for the work or repairs will be applied, and
- (iii) commissions payable;
- (d) that replaced parts will be available to the customer after the work or repairs; and
- (e) the telephone number of the regional office of the Ministry of Consumer and Commercial Relations where complaints may be directed.

7.—(1) Every repairer shall return to the customer all parts removed from the vehicle in the course of work or repairs unless advised on completion of the work or repairs that the customer does not require their return. Return of parts

(2) Every repairer shall keep parts removed from one vehicle separate from the parts removed from any other vehicle and, if their return is requested by the customer, shall return the parts in a clean container. Parts kept separate

(3) Subsections (1) and (2) do not apply to parts, Exception

- (a) for which no charge has been made; or
- (b) replaced under warranty whose return to the manufacturer or distributor is required.

8.—(1) The repairer shall, on completion of work or repairs, provide the customer with an invoice showing, Invoice

- (a) the name and address of both customer and repairer;
- (b) the make, model, vehicle identification number and licence number of the vehicle;
- (c) the date the vehicle is returned to the customer;
- (d) the odometer reading at the time of return;
- (e) a description of the work or repairs made to the vehicle;
- (f) the parts installed and whether they are new, used or reconditioned;
- (g) the price of the parts installed;

(h) the number of hours billed, the hourly rate and the total cost of labour;

(i) the total amount billed; and

(j) the terms of the warranty.

Idem (2) No repairer shall charge for shop supplies.

Idem (3) Subsection (1) applies where work is done under a warranty for which there is no charge.

Warranty **9.**—(1) Every repairer warrants all new or reconditioned parts installed and the labour required to install them for a minimum of ninety days or 5,000 kilometres, whichever comes first.

Idem (2) The person having charge of a vehicle that becomes inoperable or unsafe to drive because of the failure or inadequacy of work or repairs to which a warranty under subsection (1) applies may, where it is not reasonable to return the vehicle to the original repairer, have the failure or inadequacy repaired at the closest facility available for the work or repairs.

Idem (3) Where work or repairs are made under subsection (2), the person entitled to a warranty under subsection (1) is entitled, in addition to any other rights or recourse available at law, to recover from the original repairer the cost of the work or repairs and reasonable towing charges.

Consistent cost **10.** No person shall give an estimate or charge an amount for work or repairs that is greater than that usually given or charged by that person for the same work or repairs merely because the cost is to be paid, directly or indirectly, by an insurance company registered under the *Insurance Act*.

R.S.O. 1980,
c. 218

Illegal
charges not
payable

11.—(1) No charge made in contravention of this Act is collectable or payable.

Idem (2) Any payment of a charge that was levied in contravention of this Act or any entitlement under subsection 9 (3) is recoverable by the person that made the payment or by the warranty holder in a court of competent jurisdiction.

Offence **12.**—(1) Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided in subsection (1). Idem

(3) Where a corporation has been convicted of an offence under this Act, Idem

- (a) each director of the corporation; and
- (b) each officer, employee or agent of the corporation who was in whole or in part responsible for the contravention,

is a party to the offence unless he or she satisfies the court that he or she did not authorize, permit or acquiesce in the offence.

13. The Lieutenant Governor in Council may make regulations, Regulations

- (a) exempting any person or class of persons from the application of any provision of this Act;
- (b) prescribing conditions for any exemptions prescribed under clause (a);
- (c) prescribing size, form and style of signs for the purposes of section 6;
- (d) exempting any class of vehicle, repairer, customer or part from the application of section 9 and attaching conditions to any exemption.

14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

15. The short title of this Act is the *Motor Vehicle Repair Act, 1987*. Short title

Bill 22

An Act to regulate Motor Vehicle Repairs

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading November 16th, 1987

2nd Reading June 27th, 1988

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purpose of the Bill is to provide protection to motor vehicle owners whose vehicles require repairs. The main features of the Bill are as follows:

1. Written estimates must be provided on request. (Section 2)
2. Customers must be told in advance if there is a fee for an estimate and the amount of the fee. (Section 3)
3. No work may be charged for unless there was authorization for the work. (Subsection 4 (1))
4. Actual costs may not exceed an estimate by more than 10 per cent. (Subsection 4 (2))
5. Parts must be returned on request. (Section 7)
6. Specific warranties are set out. (Section 9)
7. Charging more for work that is covered by insurance is prohibited. (Section 10)
8. Repairers are barred from collecting illegal charges. (Section 11)

Bill 22**1987****An Act to regulate Motor Vehicle Repairs**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“customer” means an individual who contacts a repairer for an estimate, work or repairs to a vehicle;

“estimate” means an estimate of the total cost of work on and repairs for a vehicle;

“repairer” means a person who works on or repairs vehicles for compensation;

“vehicle” means a motor vehicle as defined in the *Highway Traffic Act*. R.S.O. 1980,
c. 198

2.—(1) Where a customer asks for a written estimate, no repairer shall charge for any work on or repairs to a vehicle unless the repairer first gives the customer an estimate, in writing, of the cost of the work on or repairs to the customer’s vehicle. Estimates

(2) An estimate given under subsection (1) must include, Idem

- (a) the name and address of both the customer and repairer;
- (b) the make, model, vehicle identification number and licence number of the vehicle;
- (c) a description of the work or repairs to be made to the vehicle;
- (d) the parts to be installed and a statement as to whether they will be new, used or reconditioned;
- (e) the price of the parts to be installed;

- (f) the number of hours to be billed, the hourly rate and the total cost of labour;
- (g) the total amount to be billed; and
- (h) the date the estimate is given and the date after which it ceases to apply.

Estimate fee

3.—(1) No person shall charge a fee for an estimate unless the customer is told in advance that a fee will be charged and the amount of the fee.

Idem

(2) A fee for an estimate shall be deemed to include the cost of diagnostic time and the cost of reassembling the vehicle and the cost of parts that will be damaged and must be replaced when reassembling if the work or repairs are not authorized by the customer.

Idem

(3) No person shall charge a fee for an estimate if the work or repairs in question are authorized and carried out.

Idem

(4) Despite subsection (3), a repairer may charge an estimate fee if the repairer is unable to obtain, without unreasonable delay, authorization to proceed with the work or repairs and the vehicle is reassembled before it is worked on or repaired so that it can be moved to free repair space.

Authorization required

4.—(1) No person shall charge for any work on or repairs to a vehicle unless the customer authorizes the work or repairs.

Idem

(2) No person shall charge, for work or repairs for which an estimate was given, an amount that exceeds the estimate by more than 10 per cent.

Authorization by telephone

5. An authorization for work or repairs that is given by telephone is not effective for the purpose of this Act unless the person receiving the authorization records,

- (a) the name and telephone number of the person giving the authorization; and
- (b) the date and time of the authorization.

Disclosure

6.—(1) Every repairer shall post signs as prescribed by the regulations in a conspicuous place clearly visible to prospective customers stating,

- (a) that written estimates are available on request;

- (b) whether there is a charge for an estimate;
- (c) the cost of computing labour charges including,
 - (i) the hourly rate,
 - (ii) whether a rate predetermining the length of time required for the work or repairs will be applied, and
 - (iii) whether any commissions are payable;
- (d) that replaced parts will be available to the customer after the work or repairs; and
- (e) the telephone number of the regional office of the Ministry of Consumer and Commercial Relations where complaints may be directed.

↓ (2) Clause 6 (1) (e) does not apply to a repairer who puts on all repair orders and invoices that go to consumers the telephone number of the regional office of the Ministry of Consumer and Commercial Relations to which complaints may be directed. ↑ Exception

7.—(1) Every repairer shall offer to return to the customer all parts removed from the vehicle in the course of work or repairs unless advised when the work or repairs are authorized that the customer does not require their return. ↑ Return of parts

(2) Every repairer shall keep parts removed from one vehicle separate from the parts removed from any other vehicle and, if their return is requested by the customer, shall return the parts in a clean container. ↑ Parts kept separate

(3) Subsections (1) and (2) do not apply to parts, ↑ Exception

- (a) for which no charge has been made; or
- (b) replaced under warranty whose return to the manufacturer or distributor is required.

8.—(1) The repairer shall, on completion of work or repairs, provide the customer with an invoice showing, ↑ Invoice

- (a) the name and address of both customer and repairer;
- (b) the make, model, vehicle identification number and licence number of the vehicle;

- (c) the date the vehicle is returned to the customer;
- (d) the odometer reading at the time of return;
- (e) a description of the work or repairs made to the vehicle;
- (f) the parts installed and whether they are new, used or reconditioned;
- (g) the price of the parts installed;
- (h) the number of hours billed, the hourly rate and the total cost of labour;
- (i) the total amount billed; and
- (j) the terms of the warranty.

Idem

(2) Shop supplies that are charged to a customer and not included in normal operating costs shall be itemized on the invoice.

Idem

(3) Subsection (1), excluding clauses (1) (g), (h) and (i), applies where work is done under a warranty for which there is no charge.

Warranty

9.—(1) Every repairer warrants all new or reconditioned parts installed and the labour required to install them for a minimum of ninety days or 5,000 kilometres, whichever comes first.

Idem

(2) The warranty on parts used in a motorcycle or motor assisted bicycle is thirty days or 1,500 kilometres, whichever comes first, and not as set out in subsection (1).

Idem

(3) The person having charge of a vehicle that becomes inoperable or unsafe to drive because of the failure or inadequacy of work or repairs to which a warranty under this section applies may, where it is not reasonable to return the vehicle to the original repairer, have the failure or inadequacy repaired at the closest facility available for the work or repairs.

Idem

(4) Where work or repairs are made under subsection (3), the person entitled to a warranty under this section is entitled, in addition to any other rights or recourse available at law, to recover from the repairer the original cost of the work or repairs and reasonable towing charges.

(5) A customer who subjects any part to misuse or abuse is not entitled to the benefit of the warranty on that part. Loss of warranty

(6) No repairer shall refuse to reimburse a customer because of the operation of subsection (5) unless the repairer has reasonable and probable grounds to believe that the part under warranty was subjected to misuse or abuse. Idem

(7) A customer who seeks to recover costs under this section shall return, upon the request and at the expense of the original repairer, the defective parts to the original repairer unless, in the circumstances, it is not reasonably possible for the customer to do so. Return of parts

(8) An original repairer who is required to make a payment under this section is entitled to recover from the supplier of a defective part any amount paid to the customer under subsection (4). Reimbursement

10. No person shall give an estimate or charge an amount for work or repairs that is greater than that usually given or charged by that person for the same work or repairs merely because the cost is to be paid, directly or indirectly, by an insurance company registered under the *Insurance Act*. Consistent cost

11.—(1) No charge made in contravention of this Act is collectable or payable. R.S.O. 1980, c. 218
Illegal charges not payable

(2) Any payment of a charge that was levied in contravention of this Act or any entitlement under subsection 9 (4) is recoverable by the person that made the payment or by the warranty holder in a court of competent jurisdiction. Idem

12.—(1) Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. Offence

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided in subsection (1). Idem

(3) Where a corporation has been convicted of an offence under this Act, Idem

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who was in whole or in part responsible for the contravention,

is a party to the offence unless he or she satisfies the court that he or she did not authorize, permit or acquiesce in the offence.

Regulations

13. The Lieutenant Governor in Council may make regulations,

- (a) exempting any person or class of persons from the application of this Act or any provision of this Act;
- (b) prescribing conditions for any exemptions prescribed under clause (a);
- (c) prescribing size, form and style of signs for the purposes of section 6;
- ➡ (d) exempting any class of vehicle, repairer, customer, part or type of repair from the application of this Act or any provision of this Act and attaching conditions to any exemption. ⬆

Commence-
ment

14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. The short title of this Act is the *Motor Vehicle Repair Act, 1988*.

Bill 22

(Chapter 38
Statutes of Ontario, 1988)



An Act to regulate Motor Vehicle Repairs

The Hon. W. Wrye
Minister of Consumer and Commercial Relations

<i>1st Reading</i>	November 16th, 1987
<i>2nd Reading</i>	June 27th, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 22**1987****An Act to regulate Motor Vehicle Repairs**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“customer” means an individual who contacts a repairer for an estimate, work or repairs to a vehicle;

“estimate” means an estimate of the total cost of work on and repairs for a vehicle;

“repairer” means a person who works on or repairs vehicles for compensation;

“vehicle” means a motor vehicle as defined in the *Highway Traffic Act*. R.S.O. 1980, c. 198

2.—(1) Where a customer asks for a written estimate, no repairer shall charge for any work on or repairs to a vehicle unless the repairer first gives the customer an estimate, in writing, of the cost of the work on or repairs to the customer’s vehicle. Estimates

(2) An estimate given under subsection (1) must include, Idem

- (a) the name and address of both the customer and repairer;
- (b) the make, model, vehicle identification number and licence number of the vehicle;
- (c) a description of the work or repairs to be made to the vehicle;
- (d) the parts to be installed and a statement as to whether they will be new, used or reconditioned;
- (e) the price of the parts to be installed;

- (f) the number of hours to be billed, the hourly rate and the total cost of labour;
- (g) the total amount to be billed; and
- (h) the date the estimate is given and the date after which it ceases to apply.

Estimate fee **3.—**(1) No person shall charge a fee for an estimate unless the customer is told in advance that a fee will be charged and the amount of the fee.

Idem (2) A fee for an estimate shall be deemed to include the cost of diagnostic time and the cost of reassembling the vehicle and the cost of parts that will be damaged and must be replaced when reassembling if the work or repairs are not authorized by the customer.

Idem (3) No person shall charge a fee for an estimate if the work or repairs in question are authorized and carried out.

Idem (4) Despite subsection (3), a repairer may charge an estimate fee if the repairer is unable to obtain, without unreasonable delay, authorization to proceed with the work or repairs and the vehicle is reassembled before it is worked on or repaired so that it can be moved to free repair space.

Authorization required **4.—**(1) No person shall charge for any work on or repairs to a vehicle unless the customer authorizes the work or repairs.

Idem (2) No person shall charge, for work or repairs for which an estimate was given, an amount that exceeds the estimate by more than 10 per cent.

Authorization by telephone **5.** An authorization for work or repairs that is given by telephone is not effective for the purpose of this Act unless the person receiving the authorization records,

- (a) the name and telephone number of the person giving the authorization; and
- (b) the date and time of the authorization.

Disclosure **6.—**(1) Every repairer shall post signs as prescribed by the regulations in a conspicuous place clearly visible to prospective customers stating,

- (a) that written estimates are available on request;

- (b) whether there is a charge for an estimate;
- (c) the cost of computing labour charges including,
 - (i) the hourly rate,
 - (ii) whether a rate predetermining the length of time required for the work or repairs will be applied, and
 - (iii) whether any commissions are payable;
- (d) that replaced parts will be available to the customer after the work or repairs; and
- (e) the telephone number of the regional office of the Ministry of Consumer and Commercial Relations where complaints may be directed.

(2) Clause (1) (e) does not apply to a repairer who puts on all repair orders and invoices that go to consumers the telephone number of the regional office of the Ministry of Consumer and Commercial Relations to which complaints may be directed. Exception

7.—(1) Every repairer shall offer to return to the customer all parts removed from the vehicle in the course of work or repairs unless advised when the work or repairs are authorized that the customer does not require their return. Return of parts

(2) Every repairer shall keep parts removed from one vehicle separate from the parts removed from any other vehicle and, if their return is requested by the customer, shall return the parts in a clean container. Parts kept separate

(3) Subsections (1) and (2) do not apply to parts, Exception

- (a) for which no charge has been made; or
- (b) replaced under warranty whose return to the manufacturer or distributor is required.

8.—(1) The repairer shall, on completion of work or repairs, provide the customer with an invoice showing, Invoice

- (a) the name and address of both customer and repairer;
- (b) the make, model, vehicle identification number and licence number of the vehicle;

- (c) the date the vehicle is returned to the customer;
- (d) the odometer reading at the time of return;
- (e) a description of the work or repairs made to the vehicle;
- (f) the parts installed and whether they are new, used or reconditioned;
- (g) the price of the parts installed;
- (h) the number of hours billed, the hourly rate and the total cost of labour;
- (i) the total amount billed; and
- (j) the terms of the warranty.

Idem (2) Shop supplies that are charged to a customer and not included in normal operating costs shall be itemized on the invoice.

Idem (3) Subsection (1), excluding clauses (1) (g), (h) and (i), applies where work is done under a warranty for which there is no charge.

Warranty **9.—**(1) Every repairer warrants all new or reconditioned parts installed and the labour required to install them for a minimum of ninety days or 5,000 kilometres, whichever comes first.

Idem (2) The warranty on parts used in a motorcycle or motor assisted bicycle is thirty days or 1,500 kilometres, whichever comes first, and not as set out in subsection (1).

Idem (3) The person having charge of a vehicle that becomes inoperable or unsafe to drive because of the failure or inadequacy of work or repairs to which a warranty under this section applies may, where it is not reasonable to return the vehicle to the original repairer, have the failure or inadequacy repaired at the closest facility available for the work or repairs.

Idem (4) Where work or repairs are made under subsection (3), the person entitled to a warranty under this section is entitled, in addition to any other rights or recourse available at law, to recover from the repairer the original cost of the work or repairs and reasonable towing charges.

(5) A customer who subjects any part to misuse or abuse is not entitled to the benefit of the warranty on that part. Loss of warranty

(6) No repairer shall refuse to reimburse a customer because of the operation of subsection (5) unless the repairer has reasonable and probable grounds to believe that the part under warranty was subjected to misuse or abuse. Idem

(7) A customer who seeks to recover costs under this section shall return, upon the request and at the expense of the original repairer, the defective parts to the original repairer unless, in the circumstances, it is not reasonably possible for the customer to do so. Return of parts

(8) An original repairer who is required to make a payment under this section is entitled to recover from the supplier of a defective part any amount paid to the customer under subsection (4). Reimbursement

10. No person shall give an estimate or charge an amount for work or repairs that is greater than that usually given or charged by that person for the same work or repairs merely because the cost is to be paid, directly or indirectly, by an insurance company registered under the *Insurance Act*. Consistent cost

11.—(1) No charge made in contravention of this Act is collectable or payable. R.S.O. 1980, c. 218
Illegal charges not payable

(2) Any payment of a charge that was levied in contravention of this Act or any entitlement under subsection 9 (4) is recoverable by the person that made the payment or by the warranty holder in a court of competent jurisdiction. Idem

12.—(1) Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. Offence

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided in subsection (1). Idem

(3) Where a corporation has been convicted of an offence under this Act, Idem

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who was in whole or in part responsible for the contravention,

is a party to the offence unless he or she satisfies the court that he or she did not authorize, permit or acquiesce in the offence.

Regulations

13. The Lieutenant Governor in Council may make regulations,

- (a) exempting any person or class of persons from the application of this Act or any provision of this Act;
- (b) prescribing conditions for any exemptions prescribed under clause (a);
- (c) prescribing size, form and style of signs for the purposes of section 6;
- (d) exempting any class of vehicle, repairer, customer, part or type of repair from the application of this Act or any provision of this Act and attaching conditions to any exemption.

Commence-
ment

14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. The short title of this Act is the *Motor Vehicle Repair Act, 1988*.

Bill 23

An Act to proclaim 1995 as the 150th Anniversary of the arrival of Irish Immigrants in Canada

Mr. Pollock

1st Reading November 17th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is set out in the Preamble.

Bill 23

1987

**An Act to proclaim 1995 as the 150th Anniversary of
the arrival of Irish Immigrants in Canada**

Whereas Irish immigrants were among the earliest settlers in Canada; and whereas, in 1845, Irish immigrants fleeing the potato famine in Ireland began settling in Canada in large numbers; and whereas persons of Irish descent have made significant contributions to Canada and to the Province of Ontario; and whereas it is desirable to recognize their contributions and to mark the 150th anniversary of the arrival of these immigrants to Canada;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The year 1995 is proclaimed to be the Irish Immigrants' Sesquicentennial.

Irish
Immigrants'
Sesqui-
centennial

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Irish Immigrants' Sesquicentennial Act, 1987*.

Short title

Bill 24

An Act to establish a Tourism Advisory Board

Mr. McLean

1st Reading November 18th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill establishes a Tourism Advisory Board that will serve as a permanent advisory body to the government on tourism and hospitality matters.

Bill 24**1987****An Act to establish a Tourism Advisory Board**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means the Tourism Advisory Board established under section 2;

“prescribed” means prescribed by regulations.

2. There is hereby established a board to be known as the Tourism Advisory Board.

Tourism
Advisory
Board

3. The Board is composed of not less than twelve members representing industry, labour and government in the prescribed proportion.

Members

4. The members of the Board shall be appointed in the prescribed manner and serve for the prescribed term of office.

Appointment
term of
office

5. The Board shall serve as a permanent advisory body to the government on matters concerning tourism and hospitality in the province.

Functions

6. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing the proportion of representation on the Board of each of industry, labour and government;
- (b) prescribing the manner of appointment of the members;
- (c) prescribing the terms of office of the members;
- (d) prescribing the duties and responsibilities of members and their remuneration.

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is the *Tourism Advisory Board Act, 1987*.

Bill 25

An Act to amend the Travel Industry Act

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading November 19th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. Definitions of travel agent and wholesaler are being modified and made a little broader in their scope. The reference to a travel salesman is removed. This deletion is complementary to section 2 of the Bill.

SECTION 2. The section is recast to clarify that agents and wholesalers are respectively registered as such. The requirement for a salesman to be registered is removed.

SECTION 3. The amendment is complementary to section 4 of the Bill.

SECTION 4. The provisions repealed refer to travel salesmen who will not be registered under the Act.

SECTION 5. Section 21 of the Act is the "confidentiality provision". The added clauses enlarge on the exceptions to the confidentiality rule.

SECTION 6. The new provision permits the Director to apply for a court order appointing a receiver and manager of a business where it appears in the public interest to do so.

SECTION 7. Section 22 now permits the Director to freeze assets or land of a business. The new provision would allow for a court order directing the disposition of frozen assets.

SECTION 8. This clarifies the authority to make regulations establishing and regulating a compensation fund.

Bill 25

1987

An Act to amend the Travel Industry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 1 (e), (f) and (h) of the *Travel Industry Act*, being chapter 509 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

(e) “travel agent” means a person who sells, to consumers, travel services provided by another person;

.

(h) “travel wholesaler” means a person who acquires rights to a travel service for the purpose of resale to a travel agent or who carries on the business of dealing with travel agents or travel wholesalers for the sale of travel services provided by another person.

2. Section 3 of the said Act is repealed and the following substituted therefor:

3.—(1) No person shall act or hold himself out as being available to act as a travel agent unless he is registered as a travel agent by the Registrar. Acting as
travel agent

(2) No person shall act or hold himself out as being available to act as a travel wholesaler unless he is registered as a travel wholesaler by the Registrar. Acting as
travel
wholesaler

(3) No travel agent shall conduct business from a place at which the public is invited to deal unless it is named as an office in the registration. Offices of
travel agents

(4) Where more than one office is named in the registration, one shall be designated as the main office and the remainder as branch offices. Idem

3. Subsections 4 (3) and (4) of the said Act are repealed and the following substituted therefor:

Integrity

1976-77,
c. 52 (Can.)

(4) Without restricting the generality of clause (1) (b) and subclause (1) (c) (iii), a conviction within the previous five years for theft or for an offence under paragraph 95 (h), (i), (j) or (m) of the *Immigration Act, 1976* (Canada) is sufficient grounds for the purpose of those provisions.

4. Sections 12 and 14 of the said Act are repealed and the following substituted therefor:

Notice of
material
changes

12. Every travel agent and travel wholesaler shall, within five days after the event, notify the Registrar in writing of,

- (a) any change in its address for service; and
- (b) any change in the officers in the case of a corporation or of the members in the case of a partnership.

5. Subsection 21 (1) of the said Act is amended by adding thereto the following clauses:

- (aa) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act;
- (ab) to a law enforcement agency.

6. The said Act is amended by adding thereto the following section:

Appointment
of receiver
and manager

21a.—(1) The Director may when he,

- (a) has ordered or is about to order an investigation under section 20;
- (b) has made or is about to make a directive under section 22;
- (c) has reasonable and probable grounds to believe that a person registered under this Act has failed or is about to fail to provide contracted and paid for travel services to a client;
- (d) is advised that a proposal to suspend or revoke a registration under section 5 or to temporarily suspend a registration under section 7 has been made; or

- (e) is advised that an investigation under section 19 has been ordered,

apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved travel agent or travel wholesaler.

(2) A judge, upon an application being made under subsection (1), without notice or, where the judge considers that notice should be given, upon such notice as the judge stipulates, may, where it is considered in the public interest and subject to the *Bankruptcy Act* (Canada), appoint a receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

Idem

R.S.C. 1970,
c. B-3

(3) An appointment made under subsection (2) may be extended, upon an application without notice, for an additional period not exceeding sixty days.

Extension

(4) A receiver and manager appointed under subsection (2) shall take possession and control of the assets of the business and shall thereafter conduct the business and take such steps as in his opinion should be taken toward its rehabilitation and, for such purposes, the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

Receiver
and manager
taking
control

- (a) exclude the directors, officers, servants and agents of the business from the premises and property of the business; and
- (b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business, receive the incomes and revenues of the business.

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Enforcement
of order

(6) Upon an application being made under this section, the rules of practice of the Supreme Court apply.

Rules of
practice

7. Section 22 of the said Act is amended by adding thereto the following subsection:

Application
re disposition

(6) The Director may, where he has given a direction under subsection (1) or a notice under subsection (4), apply to a judge or a local judge of the Supreme Court who may make an order as to the disposition of assets, trust funds or land affected by the direction or notice and as to costs.

8.—(1) Clause 27 (j) of the said Act is repealed.

(2) Section 27 of the said Act is amended by adding thereto the following clauses:

- (o) providing for the establishment, maintenance and administration of a compensation fund in trust by travel agents and travel wholesalers and prescribing the form and terms of the trust;
- (p) providing for the payment of levies into the compensation fund by travel agents and travel wholesalers and prescribing the amounts thereof;
- (q) providing for payment out of the compensation fund of claims and procedures to be followed in respect thereto;
- (r) requiring participation in the compensation fund by travel agents and travel wholesalers;
- (s) providing for the borrowing of moneys to supplement the compensation fund.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is the *Travel Industry Amendment Act, 1987*.

Bill 25

(Chapter 5
Statutes of Ontario, 1988)

An Act to amend the Travel Industry Act

The Hon. W. Wrye
Minister of Consumer and Commercial Relations



<i>1st Reading</i>	November 19th, 1987
<i>2nd Reading</i>	December 10th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 25

1987

An Act to amend the Travel Industry Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 1 (e), (f) and (h) of the *Travel Industry Act*, being chapter 509 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

(e) “travel agent” means a person who sells, to consumers, travel services provided by another person;

.

(h) “travel wholesaler” means a person who acquires rights to a travel service for the purpose of resale to a travel agent or who carries on the business of dealing with travel agents or travel wholesalers for the sale of travel services provided by another person.

2. Section 3 of the said Act is repealed and the following substituted therefor:

3.—(1) No person shall act or hold himself out as being available to act as a travel agent unless he is registered as a travel agent by the Registrar. Acting as travel agent

(2) No person shall act or hold himself out as being available to act as a travel wholesaler unless he is registered as a travel wholesaler by the Registrar. Acting as travel wholesaler

(3) No travel agent shall conduct business from a place at which the public is invited to deal unless it is named as an office in the registration. Offices of travel agents

(4) Where more than one office is named in the registration, one shall be designated as the main office and the remainder as branch offices. Idem

3. Subsections 4 (3) and (4) of the said Act are repealed and the following substituted therefor:

Integrity

1976-77,
c. 52 (Can.)

(4) Without restricting the generality of clause (1) (b) and subclause (1) (c) (iii), a conviction within the previous five years for theft or for an offence under paragraph 95 (*h*), (*i*), (*j*) or (*m*) of the *Immigration Act, 1976* (Canada) is sufficient grounds for the purpose of those provisions.

4. Sections 12 and 14 of the said Act are repealed and the following substituted therefor:

Notice of
material
changes

12. Every travel agent and travel wholesaler shall, within five days after the event, notify the Registrar in writing of,

- (a) any change in its address for service; and
- (b) any change in the officers in the case of a corporation or of the members in the case of a partnership.

5. Subsection 21 (1) of the said Act is amended by adding thereto the following clauses:

- (aa) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act;
- (ab) to a law enforcement agency.

6. The said Act is amended by adding thereto the following section:

Appointment
of receiver
and manager

21a.—(1) The Director may when he,

- (a) has ordered or is about to order an investigation under section 20;
- (b) has made or is about to make a directive under section 22;
- (c) has reasonable and probable grounds to believe that a person registered under this Act has failed or is about to fail to provide contracted and paid for travel services to a client;
- (d) is advised that a proposal to suspend or revoke a registration under section 5 or to temporarily suspend a registration under section 7 has been made; or

- (e) is advised that an investigation under section 19 has been ordered,

apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved travel agent or travel wholesaler.

(2) A judge, upon an application being made under subsection (1), without notice or, where the judge considers that notice should be given, upon such notice as the judge stipulates, may, where it is considered in the public interest and subject to the *Bankruptcy Act* (Canada), appoint a receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

Idem

R.S.C. 1970,
c. B-3

(3) An appointment made under subsection (2) may be extended, upon an application without notice, for an additional period not exceeding sixty days.

Extension

(4) A receiver and manager appointed under subsection (2) shall take possession and control of the assets of the business and shall thereafter conduct the business and take such steps as in his opinion should be taken toward its rehabilitation and, for such purposes, the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

Receiver
and manager
taking
control

(a) exclude the directors, officers, servants and agents of the business from the premises and property of the business; and

(b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business, receive the incomes and revenues of the business.

(5) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Enforcement
of order

(6) Upon an application being made under this section, the rules of practice of the Supreme Court apply.

Rules of
practice

7. Section 22 of the said Act is amended by adding thereto the following subsection:

Application
re disposition

(6) The Director may, where he has given a direction under subsection (1) or a notice under subsection (4), apply to a judge or a local judge of the Supreme Court who may make an order as to the disposition of assets, trust funds or land affected by the direction or notice and as to costs.

8.—(1) Clause 27 (j) of the said Act is repealed.

(2) Section 27 of the said Act is amended by adding thereto the following clauses:

- (o) providing for the establishment, maintenance and administration of a compensation fund in trust by travel agents and travel wholesalers and prescribing the form and terms of the trust;
- (p) providing for the payment of levies into the compensation fund by travel agents and travel wholesalers and prescribing the amounts thereof;
- (q) providing for payment out of the compensation fund of claims and procedures to be followed in respect thereto;
- (r) requiring participation in the compensation fund by travel agents and travel wholesalers;
- (s) providing for the borrowing of moneys to supplement the compensation fund.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is the *Travel Industry Amendment Act, 1988*.

Bill 26

An Act to regulate Prepaid Services

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading · November 19th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to regulate the provisions of health, fitness and related services where the services are prepaid.

The main provisions of the Bill are as follows:

1. The Act does not apply unless there is to be prepayment of services. Section 2 sets out situations where the Act does and does not apply.
2. Sections 4, 5 and 6 set out the form and contents of contracts.
3. The number of initiation fees that may be charged are restricted (section 7).
4. Instalment plans are to be available (section 8).
5. Provision is made for rescission (section 9).
6. Where facilities are not available, a trustee must be used to hold funds (section 13).

Bill 26**1987****An Act to regulate Prepaid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“contract” means a contract for services to which this Act applies;

“customer” means a person who enters into, or is discussing with an operator the prospect of entering into, a contract;

“initiation fee” means a fee in addition to the annual membership fee;

“membership fee” means the amount payable by a customer for the use of services;

“operator” means a person who provides or offers to provide services;

“payment” includes an initiation fee;

“services” means facilities provided, for or instruction on,

(a) health, fitness, modelling, talent development, diet or matters of a similar nature, or

(b) in martial arts, sports, dance or similar activities.

2.—(1) This Act applies in respect of services or proposed services for which payment in advance is required. Application

(2) This Act does not apply in respect of services that are provided, Idem

(a) on a non-profit or co-operative basis;

(b) by a private club primarily owned by its members;

- (c) incidental to the main business of the operator;
- (d) by an operator funded or run by a charitable or municipal organization or by the Province of Ontario or any agency thereof;
- (e) for an amount less than that prescribed by regulation.

Idem

(3) This Act does not apply to a contract in force at the time this Act comes into force.

Contract
required

3.—(1) No operator shall require or accept advance payment for services from a customer with whom the operator does not have a written contract that meets the conditions set out in section 4.

Payments
repayable

(2) All payments received in contravention of subsection (1) are repayable to the person making the payments on demand by that person.

Information
in contract

4.—(1) A contract must set out,

- (a) the name and address of the operator and the customer;
- (b) a description of the services available to the customer that is sufficient to identify them with certainty;
- (c) the price list showing the cost of the various services provided;
- (d) the conditions upon which the contract may be renewed, cancelled or rescinded;
- (e) the instalment plans available to customers for the payment of membership and, where applicable, initiation fees together with an explanation of differences in cost to the customer of available plans; and
- (f) where any part of the services are not available at the time the contract is signed, the date that the services will be made available and the name and address of the person holding the trust funds pending availability.

Renewal of
contracts

(2) A contract that provides for renewal must also provide that it is not renewable if the customer notifies the operator in

writing, before the time for renewal, that the customer does not want to renew.

5. No contract may be made for a term longer than one year after the day that all the services are made available to the customer. Contracts for one year only

6.—(1) No contract may be made between two parties to an existing contract unless the subsequent contract is for services that are distinctly different from the services to be provided under the existing contract. Only one contract

(2) For the purposes of subsection (1), a different term or a different commencement date does not constitute a distinct difference in the services to be provided. Idem

7.—(1) No operator shall charge a customer more than one initiation fee. Initiation fee

(2) No operator shall charge an initiation fee that is greater than twice the annual membership fee. Idem

8. Every operator shall make available to customers at least one plan for instalment payments of membership and, where applicable, initiation fees whereby customers may make payments on a monthly basis. Instalment plans

9.—(1) Any customer may rescind a contract by delivering written notice of rescission to the operator within five days after the contract is signed or the services are available, whichever is the later. Rescission

(2) A customer who rescinds a contract is not liable for payment for services received or used up to the rescission and is entitled to a refund of any payment made pursuant to the contract. Idem

(3) A notice of rescission sent to an operator by registered mail shall be deemed to be delivered on the day that it is mailed. Idem

10. Every operator who owes a refund shall pay the refund within ten days, Refund

(a) after receiving notice of rescission or cancellation, as the case may be; or

(b) where subsection 13 (3) or (4) applies, after the day specified in the contract or the expiration of the last permission, whichever is the later.

Notice re
renewal

11.—(1) Where a contract provides for renewal and the operator does not deliver to the customer a notice reminding the customer of the provision required by subsection 4 (2), the provision for renewal does not apply.

Idem

(2) The notice under subsection (1) must be delivered at least thirty days before but not more than ninety days before the end of the contract.

Idem

(3) A notice under subsection (1) sent by registered mail to the customer at the last known address of the customer that the operator has shall be deemed to be delivered on the day that it is mailed.

Monthly
renewals

(4) Subsection (1) does not apply to a contract providing for successive monthly renewals where the customer has the option of cancelling on one month's notice or less.

Trust account

12. Every operator shall maintain a trust account designated by the name of the operator and the words "prepaid contract trust" at a bank, trust company, credit union or caisse populaire in which the operator shall place all funds received in respect of membership for a contract that may be rescinded under section 9.

Trustee

13.—(1) No operator shall receive payment from a customer for services that are not available at the time the payment is made except through a trust company incorporated under the *Loan and Trust Corporations Act, 1987* that has agreed to act as a trustee for the payment.

1987, c. 33

Exception

(2) Subsection (1) does not apply where one of the services that is not available is the use of the facility and the customer has agreed in writing to use another facility provided by the operator until the facility contracted for is available.

Facility not
available

(3) Where a facility is not available for use on the day specified in the contract, the trustee shall refund all payment received from the customer unless the customer agrees in writing to permit the trustee to retain the payment.

Extension

(4) No permission given under subsection (3) applies for longer than ninety days but a subsequent permission may be given on the expiration of a permission.

Duties of
trustee

(5) Where an operator has a trustee under subsection (1),

(a) any notice to the trustee shall be deemed to be notice to the operator as if the trustee were the operator; and

- (b) any money payable by the operator is payable by the trustee to the extent that the trustee holds sufficient trust funds for that purpose.

(6) Every trustee under subsection (1) shall, upon receiving any payment from a customer, provide the customer with written confirmation of receipt of the payment and that the payment will be dealt with in accordance with this Act. Idem

(7) No trustee shall release to an operator funds received from a customer except in accordance with the trust agreement. Idem

14. A waiver by a customer of any provision of this Act is not valid. Waiver invalid

15.—(1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$25,000 or to imprisonment for a term of not more than one year, or to both, or if such person is a corporation, to a fine of not more than \$50,000. Penalty

(2) Where a corporation is guilty of an offence under this Act or the regulations, every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$25,000 or to imprisonment for a term of not more than one year, or to both. Idem

16. The Lieutenant Governor in Council may make regulations, Regulations

- (a) defining any word or expression used in this Act;
- (b) regulating the form of contracts including the size, type and colour of letters used therein;
- (c) governing advertisement by operators;
- (d) prescribing classes of operators;
- (e) exempting any class of operator from the application of this Act or the regulations or any provision of this Act or the regulations;
- (f) prescribing an amount for the purposes of clause 2 (2) (e);

- (g) governing trusts set up for purposes of subsection 13 (1) and prescribing terms of trust agreements.

Commence-
ment

17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18. The short title of this Act is the *Prepaid Services Act*, 1987.

Bill 26

An Act to regulate Prepaid Services

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading November 19th, 1987

2nd Reading June 21st, 1988

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purpose of the Bill is to regulate the provisions of health, fitness and related services where the services are prepaid.

The main provisions of the Bill are as follows:

1. The Act does not apply unless there is to be prepayment of services. Section 2 sets out situations where the Act does and does not apply.
2. Sections 4, 5 and 6 set out the form and contents of contracts.
3. The number of initiation fees that may be charged are restricted (section 7).
4. Instalment plans are to be available (section 8).
5. Provision is made for rescission (section 9).
6. Where facilities are not available, a trustee must be used to hold funds (section 13).

Bill 26**1987****An Act to regulate Prepaid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“contract” means a contract for services to which this Act applies;

“customer” means a person who enters into, or is discussing with an operator the prospect of entering into, a contract;

“initiation fee” means a fee in addition to the annual membership fee;

“membership fee” means the amount payable by a customer for the use of services;

“operator” means a person who provides or offers to provide services;

“payment” includes an initiation fee;

“services” means facilities provided for, or instruction on,

- (a) health, fitness, modelling, talent development, diet or matters of a similar nature, or
- (b) martial arts, sports, dance or similar activities.

2.—(1) This Act applies in respect of services or proposed services for which payment in advance is required. Application

(2) This Act does not apply in respect of services that are provided, Idem

- (a) on a non-profit or co-operative basis;
- (b) by a private club primarily owned by its members;

- (c) incidental to the main business of the operator;
- (d) by an operator funded or run by a charitable or municipal organization or by the Province of Ontario or any agency thereof;
- (e) for an amount less than that prescribed by regulation.

Idem

(3) This Act does not apply to a contract in force at the time this Act comes into force.

Contract
required

3.—(1) No operator shall require or accept advance payment for services from a customer with whom the operator does not have a written contract that meets the conditions set out in section 4.

Payments
repayable

(2) All payments received in contravention of subsection (1) are repayable to the person making the payments on demand by that person.

Information
in contract

4.—(1) A contract must set out,

- (a) the name and address of the operator and the customer;
- (b) a description of the services contracted for by the customer that is sufficient to identify them with certainty;
- ➡ (c) the price of the services contracted for; ⬆
- (d) the conditions upon which the contract may be renewed, cancelled or rescinded;
- ➡ (e) if payment is to be by instalment, the number of instalments, the amount of each instalment and the total additional cost, if any, for payment by instalment; and ⬆
- (f) where any part of the services are not available at the time the contract is signed, the date that the services will be made available and the name and address of the person holding the trust funds pending availability.

Renewal of
contracts

(2) A contract that provides for renewal must also provide that it is not renewable if the customer notifies the operator in writing, before the time for renewal, that the customer does not want to renew.

5. No contract may be made for a term longer than one year after the day that all the services are made available to the customer. Contracts for one year only

6.—(1) No contract may be made between two parties to an existing contract unless the subsequent contract is for services that are distinctly different from the services to be provided under the existing contract. Only one contract

(2) For the purposes of subsection (1), a different term or a different commencement date does not constitute a distinct difference in the services to be provided. Idem

7.—(1) No operator shall charge a customer more than one initiation fee. Initiation fee

(2) No operator shall charge an initiation fee that is greater than twice the annual membership fee. Idem

8.—(1) Every operator shall make available to customers at least one plan for instalment payments of membership and, where applicable, initiation fees whereby customers may make equal monthly payments over the term of the contract. Instalment plans

↓
(2) In a plan for payments, the total amount paid by instalments shall not exceed the membership or initiation fee, if applicable, by more than 25 per cent. Idem
↑

9.—(1) Any customer may rescind a contract by delivering written notice of rescission to the operator within five days after the contract is signed or the services are available, whichever is the later. Rescission

(2) A customer who rescinds a contract is not liable for payment for services received or used up to the rescission and is entitled to a refund of any payment made pursuant to the contract. Idem

(3) A notice of rescission sent to an operator by registered mail shall be deemed to be delivered on the day that it is mailed. Idem

10. Every operator who owes a refund shall pay the refund within twenty days, Refund

(a) after receiving notice of rescission or cancellation, as the case may be; or

- (b) where subsection 13 (3) or (4) applies, after the day specified in the contract or the expiration of the last permission, whichever is the later.

Notice re
renewal

11.—(1) Where a contract provides for renewal and the operator does not deliver to the customer a notice reminding the customer of the provision required by subsection 4 (2), the provision for renewal does not apply.

Idem

(2) The notice under subsection (1) must be delivered at least thirty days before but not more than ninety days before the end of the contract.

Idem

(3) A notice under subsection (1) sent by registered mail to the customer at the last known address of the customer that the operator has shall be deemed to be delivered on the day that it is mailed.

Monthly
renewals

(4) Subsection (1) does not apply to a contract providing for successive monthly renewals where the customer has the option of cancelling on one month's notice or less.

Trust account

12. Every operator shall maintain a trust account designated by the name of the operator and the words "prepaid contract trust" at a bank, trust company, credit union or caisse populaire in which the operator shall place all funds received in respect of membership for a contract that may be rescinded under section 9.

Trustee

13.—(1) No operator shall receive payment from a customer for services that are not available at the time the payment is made except through a trust company registered under the *Loan and Trust Corporations Act, 1987* that has agreed to act as a trustee for the payment.

1987, c. 33

Exception

(2) Subsection (1) does not apply where one of the services that is not available is the use of the facility and the customer has agreed in writing to use another facility provided by the operator until the facility contracted for is available.

Facility not
available

(3) Where a facility is not available for use on the day specified in the contract, the trustee shall refund all payment received from the customer unless the customer agrees in writing to permit the trustee to retain the payment.

Extension

(4) No permission given under subsection (3) applies for longer than ninety days but a subsequent permission may be given on the expiration of a permission.

Duties of
trustee

(5) Where an operator has a trustee under subsection (1),

- (a) any notice to the trustee shall be deemed to be notice to the operator as if the trustee were the operator; and
- (b) any money payable by the operator is payable by the trustee to the extent that the trustee holds sufficient trust funds for that purpose.

(6) Every trustee under subsection (1) shall, upon receiving any payment from a customer, provide the customer with written confirmation of receipt of the payment and that the payment will be dealt with in accordance with this Act. Idem

(7) No trustee shall release to an operator funds received from a customer except in accordance with the trust agreement. Idem

14. A waiver by a customer of any provision of this Act is not valid. Waiver
invalid

15.—(1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$25,000 or to imprisonment for a term of not more than one year, or to both, or if such person is a corporation, to a fine of not more than \$50,000. Penalty

(2) Where a corporation is guilty of an offence under this Act or the regulations, every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$25,000 or to imprisonment for a term of not more than one year, or to both. Idem

16. The Lieutenant Governor in Council may make regulations, Regulations

- (a) defining any word or expression used in this Act;
- (b) regulating the form of contracts including the size, type and colour of letters used therein;
- (c) governing advertisement by operators;
- (d) prescribing classes of operators;
- (e) exempting any class of operator from the application of this Act or the regulations or any provision of this Act or the regulations;

- (f) prescribing an amount for the purposes of clause 2 (2) (e);
- (g) governing trusts set up for purposes of subsection 13 (1) and prescribing terms of trust agreements.

Commence-
ment

17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18. The short title of this Act is the *Prepaid Services Act*, 1988.

Bill 26

(Chapter 39
Statutes of Ontario, 1988)



An Act to regulate Prepaid Services

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

<i>1st Reading</i>	November 19th, 1987
<i>2nd Reading</i>	June 21st, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 26**1987****An Act to regulate Prepaid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“contract” means a contract for services to which this Act applies;

“customer” means a person who enters into, or is discussing with an operator the prospect of entering into, a contract;

“initiation fee” means a fee in addition to the annual membership fee;

“membership fee” means the amount payable by a customer for the use of services;

“operator” means a person who provides or offers to provide services;

“payment” includes an initiation fee;

“services” means facilities provided for, or instruction on,

(a) health, fitness, modelling, talent development, diet or matters of a similar nature, or

(b) martial arts, sports, dance or similar activities.

2.—(1) This Act applies in respect of services or proposed services for which payment in advance is required. Application

(2) This Act does not apply in respect of services that are provided, Idem

(a) on a non-profit or co-operative basis;

(b) by a private club primarily owned by its members;

- (c) incidental to the main business of the operator;
- (d) by an operator funded or run by a charitable or municipal organization or by the Province of Ontario or any agency thereof;
- (e) for an amount less than that prescribed by regulation.

Idem

(3) This Act does not apply to a contract in force at the time this Act comes into force.

Contract
required

3.—(1) No operator shall require or accept advance payment for services from a customer with whom the operator does not have a written contract that meets the conditions set out in section 4.

Payments
repayable

(2) All payments received in contravention of subsection (1) are repayable to the person making the payments on demand by that person.

Information
in contract

4.—(1) A contract must set out,

- (a) the name and address of the operator and the customer;
- (b) a description of the services contracted for by the customer that is sufficient to identify them with certainty;
- (c) the price of the services contracted for;
- (d) the conditions upon which the contract may be renewed, cancelled or rescinded;
- (e) if payment is to be by instalment, the number of instalments, the amount of each instalment and the total additional cost, if any, for payment by instalment; and
- (f) where any part of the services are not available at the time the contract is signed, the date that the services will be made available and the name and address of the person holding the trust funds pending availability.

Renewal of
contracts

(2) A contract that provides for renewal must also provide that it is not renewable if the customer notifies the operator in writing, before the time for renewal, that the customer does not want to renew.

5. No contract may be made for a term longer than one year after the day that all the services are made available to the customer. Contracts for one year only

6.—(1) No contract may be made between two parties to an existing contract unless the subsequent contract is for services that are distinctly different from the services to be provided under the existing contract. Only one contract

(2) For the purposes of subsection (1), a different term or a different commencement date does not constitute a distinct difference in the services to be provided. Idem

7.—(1) No operator shall charge a customer more than one initiation fee. Initiation fee

(2) No operator shall charge an initiation fee that is greater than twice the annual membership fee. Idem

8.—(1) Every operator shall make available to customers at least one plan for instalment payments of membership and, where applicable, initiation fees whereby customers may make equal monthly payments over the term of the contract. Instalment plans

(2) In a plan for payments, the total amount paid by instalments shall not exceed the membership or initiation fee, if applicable, by more than 25 per cent. Idem

9.—(1) Any customer may rescind a contract by delivering written notice of rescission to the operator within five days after the contract is signed or the services are available, whichever is the later. Rescission

(2) A customer who rescinds a contract is not liable for payment for services received or used up to the rescission and is entitled to a refund of any payment made pursuant to the contract. Idem

(3) A notice of rescission sent to an operator by registered mail shall be deemed to be delivered on the day that it is mailed. Idem

10. Every operator who owes a refund shall pay the refund within twenty days, Refund

- (a) after receiving notice of rescission or cancellation, as the case may be; or

- (b) where subsection 13 (3) or (4) applies, after the day specified in the contract or the expiration of the last permission, whichever is the later.

Notice re
renewal

11.—(1) Where a contract provides for renewal and the operator does not deliver to the customer a notice reminding the customer of the provision required by subsection 4 (2), the provision for renewal does not apply.

Idem

(2) The notice under subsection (1) must be delivered at least thirty days before but not more than ninety days before the end of the contract.

Idem

(3) A notice under subsection (1) sent by registered mail to the customer at the last known address of the customer that the operator has shall be deemed to be delivered on the day that it is mailed.

Monthly
renewals

(4) Subsection (1) does not apply to a contract providing for successive monthly renewals where the customer has the option of cancelling on one month's notice or less.

Trust account

12. Every operator shall maintain a trust account designated by the name of the operator and the words "prepaid contract trust" at a bank, trust company, credit union or caisse populaire in which the operator shall place all funds received in respect of membership for a contract that may be rescinded under section 9.

Trustee

13.—(1) No operator shall receive payment from a customer for services that are not available at the time the payment is made except through a trust company registered under the *Loan and Trust Corporations Act, 1987* that has agreed to act as a trustee for the payment.

1987, c. 33

Exception

(2) Subsection (1) does not apply where one of the services that is not available is the use of the facility and the customer has agreed in writing to use another facility provided by the operator until the facility contracted for is available.

Facility not
available

(3) Where a facility is not available for use on the day specified in the contract, the trustee shall refund all payment received from the customer unless the customer agrees in writing to permit the trustee to retain the payment.

Extension

(4) No permission given under subsection (3) applies for longer than ninety days but a subsequent permission may be given on the expiration of a permission.

Duties of
trustee

(5) Where an operator has a trustee under subsection (1),

- (a) any notice to the trustee shall be deemed to be notice to the operator as if the trustee were the operator; and
- (b) any money payable by the operator is payable by the trustee to the extent that the trustee holds sufficient trust funds for that purpose.

(6) Every trustee under subsection (1) shall, upon receiving any payment from a customer, provide the customer with written confirmation of receipt of the payment and that the payment will be dealt with in accordance with this Act. Idem

(7) No trustee shall release to an operator funds received from a customer except in accordance with the trust agreement. Idem

14. A waiver by a customer of any provision of this Act is not valid. Waiver
invalid

15.—(1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$25,000 or to imprisonment for a term of not more than one year, or to both, or if such person is a corporation, to a fine of not more than \$50,000. Penalty

(2) Where a corporation is guilty of an offence under this Act or the regulations, every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$25,000 or to imprisonment for a term of not more than one year, or to both. Idem

16. The Lieutenant Governor in Council may make regulations, Regulations

- (a) defining any word or expression used in this Act;
- (b) regulating the form of contracts including the size, type and colour of letters used therein;
- (c) governing advertisement by operators;
- (d) prescribing classes of operators;
- (e) exempting any class of operator from the application of this Act or the regulations or any provision of this Act or the regulations;

- (f) prescribing an amount for the purposes of clause 2 (2) (e);
- (g) governing trusts set up for purposes of subsection 13 (1) and prescribing terms of trust agreements.

Commence-
ment

17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18. The short title of this Act is the *Prepaid Services Act*, 1988.

1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 27

An Act respecting Prearranged and Prepaid Funerals

The Hon. W. Wrye

Minister of Consumer and Commercial Relations

1st Reading November 19th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to regulate agreements to offer prepaid funeral services. The main features of the Bill are as follows:

1. Only holders of funeral establishment licences who participate in a compensation fund may contract to provide prepaid funeral services. (Section 2)
2. A contract to provide for prepaid funeral services may be cancelled by the beneficiary at any time before it is fulfilled. (Section 4)
3. There are provisions governing excess funds and limits on costs and payments.
4. Provisions are made for the establishment of trust accounts and the regulating and inspections of trust accounts.
5. Provision is made for a compensation fund and mandatory participation in the fund.

Bill 27

1987

An Act respecting Prearranged and Prepaid Funerals

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“beneficiary” means the person for whom any funeral services are to be provided under a contract;

“Compensation Fund” means the Prepaid Funeral Services Compensation Fund established under the regulations;

“contract” means an agreement whereby in consideration of,

(a) any payment prior to the death of the beneficiary,
or

(b) a purchaser entering into an insurance contract or plan under which any licensee is to receive directly or indirectly the proceeds of an insurance policy,

a person contracts to provide or make provision for any funeral services or disbursements upon the death of a beneficiary;

“depository” means a chartered bank, loan or trust company, Province of Ontario Savings Office or credit union as defined in the *Credit Unions and Caisses Populaires Act*;

R.S.O. 1980,
c. 102

“Director” means the Director appointed under the *Ministry of Consumer and Commercial Relations Act*;

R.S.O. 1980,
c. 274

“disbursements” means payments usually made by a funeral director on behalf of a purchaser of funeral services;

“funeral director” means a funeral director under the *Funeral Services Act*;

R.S.O. 1980,
c. 180

- R.S.O. 1980,
c. 180
- “funeral services” means funeral services supplied under the *Funeral Services Act* and funeral supplies;
- “income” means the interest or other money earned, including the compounding thereof, by the investment of funds received under a contract;
- “licensee” means the holder of a funeral services establishment licence;
- “Minister” means the Minister of Consumer and Commercial Relations;
- “prearrangement” means an arrangement for the provision of specific funeral services on the death of a person who is alive at the time the arrangement is made;
- “prepayment” means the payment or the guarantee of the payment pursuant to a contract;
- “prepayment funds” means the money deposited in trust under the provisions of this Act and the income therefrom;
- “prescribed” means prescribed by the regulations;
- “purchaser” means the person who purchases funeral services under a contract;
- “Registrar” means the Registrar of the Board of Funeral Services;
- “regulations” means the regulations made under this Act.
- Restrictions
on contracts
- 2.—**(1) No person other than a licensee who is a participant in good standing in the Compensation Fund shall enter into or offer to enter into a contract with a purchaser.
- Exception
- (2) Subsection (1) does not apply to a person selling funeral supplies under the authority of another Act.
- Contract
- 3.—**(1) No contract shall contain a provision for the prepayment of a cemetery plot.
- Idem
- (2) All goods or services for which a licensee accepts prepayment in respect of one beneficiary shall be included in one contract.
- Guaranteed
price
- (3) No contract shall guarantee the price of any goods or services in a contract unless the price of all goods and services included in the contract are guaranteed.

(4) No licensee shall enter into a contract that is in contravention of any provision in this section. Offence

4.—(1) A beneficiary or a beneficiary's personal representative may cancel a contract at any time prior to the delivery of all the services contracted for. Cancellation of contracts

(2) Subsection (1) applies to a contract made before this Act comes into force. Idem

5. No person shall charge or accept any payment with respect to the prearrangement of funeral services in addition to those agreed to under a contract. Limit on payments

6.—(1) Every person who receives payment under a contract shall hold the amount of the payment together with all income accrued thereon in trust for the beneficiary until it is disbursed in accordance with this Act. Trusts

(2) Where a contract is cancelled, the person holding funds in trust under that contract shall forthwith pay the funds and all income accrued thereon to the beneficiary. Idem

(3) A person paying under subsection (2) may deduct from the amount paid such fees as are prescribed. Retaining fees

7. Where a contract is fulfilled and notwithstanding any contrary provision in the contract, the balance, if any, of the prepayment funds that are in excess of the cost of delivering the services contracted for shall be paid to the beneficiary's estate forthwith. Excess funds

8. The cost of delivering the services required under a contract shall not exceed the amount that would otherwise be charged for the same services if there had not been prepayment. Limit on costs

9.—(1) The Lieutenant Governor in Council may make regulations, Regulations

(a) prescribing the manner in which trust accounts shall be kept and accounted for and providing for their inspections;

(b) prescribing the duties of depositories;

(c) governing receipts to be given by funeral directors and licensees;

- (d) providing for the establishment, maintenance and administration of a Compensation Fund including prescribing provisions relating to the investing and paying out of money from the fund;
- (e) providing for the payment of levies into the Compensation Fund and prescribing the amounts of levies;
- (f) providing for appeals from a refusal to pay out of the Compensation Fund;
- (g) governing the powers and duties of the trustee administering the Compensation Fund;
- (h) requiring the purchase of bonds for the purpose of indemnifying the Compensation Fund and prescribing the terms of the bonds;
- (i) providing for payment out of the Compensation Fund of claims and procedures to be followed in respect thereto;
- (j) requiring participation in the Compensation Fund by licensees and funeral directors;
- (k) on any matter relating generally to the purchase, renewal or terms of a bond or the disposition of payments received thereunder;
- (l) governing contracts including the cancellation of contracts and prescribing the terms that a contract shall be deemed to contain;
- (m) prescribing conditions under which contracts may be assigned and prohibiting any assignments that are not in accordance with the prescribed conditions;
- (n) regulating, limiting or prohibiting the soliciting of contracts;
- (o) regulating the advertising of prepaid funeral services;
- (p) exempting any person, class of persons or class of contracts from the application of any provision of this Act or the regulations and prescribing conditions for any exemption;

- (q) governing the books, accounts and records that shall be kept by funeral directors and licensees;
- (r) prescribing information to be provided by funeral directors and licensees to the Registrar and requiring the reporting thereof;
- (s) requiring and providing for the inspections of records, accounts and documents kept by funeral directors and licensees;
- (t) governing the books and records to be submitted by the Board of Funeral Services to the Minister;
- (u) prescribing fees for the purpose of subsection 6 (3);
- (v) prescribing forms for the purpose of this Act and the regulations and providing for their use.

(2) Any regulation made under this section may be retroactive in effect and may apply to contracts entered into before this Act comes into force. Retroactivity

10.—(1) Any person designated as an inspector in writing by the Registrar may, during normal business hours upon production of the designation, enter any funeral service establishment or any place of business of a funeral director to examine books, records, accounts or documents required to be kept under this Act. Inspections

(2) Every person designated by the Registrar as an inspector is authorized to examine any books, records, accounts or documents required to be kept under this Act. Idem

(3) No person shall obstruct an inspector from examining anything that the inspector is authorized to examine or withhold from the inspector or conceal or destroy anything that the inspector is authorized to examine or copy. Idem

(4) An inspector examining anything under this section may, on giving a receipt therefor, remove the thing for the purpose of making copies thereof but the copying must be made quickly and the record promptly returned. Idem

(5) Any copy made under subsection (4) and certified as a true copy by the person making it is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the record copied and its contents. Idem

Investigation

11.—(1) Where, upon a statement made under oath, the Director has reasonable grounds to believe that any person has contravened any of the provisions of this Act or the regulations, the Director may, by order, appoint an investigator to ascertain whether a contravention has occurred, and the person appointed shall report the result of the investigation to the Director.

Idem

(2) For purposes relevant to the subject-matter of an investigation under this section, the investigator may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) enter in or upon the lands or premises of a person at any reasonable time without a warrant for the purpose of carrying out an inspection, audit or examination;
- (b) require the production for inspection, audit or examination of all books of account, documents, vouchers, payrolls, records, letters patent, by-laws, minutes of directors' meetings or documents that are or may be relevant to the inspection, audit or examination;
- (c) upon giving a receipt therefor, remove any books, papers, records or documents examined under clause (b) for the purpose of making copies or extracts, but such copying shall be carried out with reasonable dispatch and the books, papers, records or documents shall be promptly returned;
- (d) make any inquiries of any person separate from another person that are or may be relevant to the inspection audit or examination and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Entry
restricted

(3) No person appointed under subsection (1) shall enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

Obstruction
prohibited

(4) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

(5) Where a justice of the peace is satisfied, upon an application by the person making an investigation under this section, that the investigation has been ordered and that the person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officers as he or she calls upon to assist, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night. Search

(6) Any copy made pursuant to subsection (2) that is certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original book, paper or document and its contents. Copies

12.—(1) Where,

- (a) an investigation of any person has been ordered under section 11; or
- (b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a licensee,

Order to
refrain from
dealing with
assets

the Director, if he or she believes it advisable for the protection of customers of the person referred to in clause (a) or (b) may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause (a) or (b) to hold such assets or trust funds or direct the person referred to in clause (a) or (b) to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of customers in his or her possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator legally appointed, or until the Director revokes the direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

Bond in lieu (2) Subsection (1) does not apply where the person referred to in clause (1) (a) or (b) files with the Director,

(a) a personal bond accompanied by collateral security;

R.S.O. 1980,
c. 192

(b) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*; or

(c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director may determine.

Application
for direction

(3) Any person in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

Cancellation
of direction

(4) Any person referred to in clause (1) (a) or (b) in respect of whom a direction has been given by the Director under subsection (1) may, at any time, apply to the Commercial Registration Appeal Tribunal for cancellation in whole or in part of the direction and the tribunal shall dispose of the application after a hearing and may, if it finds that the direction is not required in whole or in part for the protection of customers of the applicant or that the interests of other persons are unduly prejudiced thereby, cancel the direction in whole or in part, and the applicant, the Director and such other persons as the tribunal may specify are parties to the proceedings before the tribunal.

Offence

13.—(1) Every person who contravenes this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$20,000 and in default of payment to imprisonment for not more than six months.

Idem

(2) Where a corporation is convicted of an offence under this Act, the maximum fine that may be imposed on the corporation is \$40,000 and not as provided in subsection (1).

Idem

(3) Where a corporation has been convicted of an offence under this Act,

(a) each director of the corporation; and

- (b) each officer, employee or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he or she satisfies the court that he or she did not authorize, permit or acquiesce in the offence.

(4) No proceeding under subsection (1) shall be commenced more than two years after the facts upon which the proceeding is based first come to the attention of the Registrar. Time
prescription

14. The *Prearranged Funeral Services Act*, being chapter 387 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

15. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

16. The short title of this Act is the *Prepaid Funeral Services Act, 1987*. Short title

1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 28

An Act to amend the Funeral Services Act

The Hon. E. Caplan
Minister of Health

1st Reading November 19th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill is complementary to the proposed *Prepaid Funeral Services Act, 1987*.

The changes to the Act are as follows:

1. The composition of the Board is changed from five funeral directors and three laymen to six funeral directors and five laymen. (Section 1 (1))
2. The quorum for the Board is changed from three members, one of whom must be a layman, to five members, two of whom must be laymen. (Section 1 (2))
3. The duties of the Board are expanded. (Sections 2, 3)
4. Participation in a compensation fund will be mandatory. (Section 4)

Bill 28

1987

An Act to amend the Funeral Services Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 2 (2) of the *Funeral Services Act*, being chapter 180 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(2) The Board shall be composed of, Composition

- (a) six funeral directors, one of whom is not licensed to establish and maintain and who does not direct the operation of a funeral services establishment; and
- (b) five persons who are not licensees under this Act,

appointed by the Lieutenant Governor in Council.

(2) Subsection 2 (5) of the said Act is repealed and the following substituted therefor:

(5) Five members of the Board, at least two of whom must Quorum
be members appointed under clause (2) (b), constitute a quorum.

2.—(1) Subsection 4 (1) of the said Act is amended by adding thereto the following clauses:

- (h) to administer the Prepaid Funeral Services Compensation Fund;
- (i) to oversee and inspect trust accounts that funeral directors are required by law to establish or maintain,

.

(2) Subsection 4 (2) of the said Act is amended by adding thereto the following clause:

1987, c. ...

- (c) deliver to the Minister of Consumer and Commercial Relations on or before the 31st day of January in each year a report on the operation of the *Prepaid Funeral Services Act, 1987* and make recommendations to the said Minister thereon.

3.—(1) Subsection 7 (1) of the said Act is amended by striking out “as hereinafter provided” in the first and second lines.

(2) The said subsection 7 (1) is further amended by adding thereto the following clause:

- (e) Compensation Fund Committee,

.

4. Section 24 of the said Act is amended by adding thereto the following subsection:

Condition of
licence

- (4) It is a condition precedent and subsequent to obtaining and maintaining a funeral services establishment licence that the applicant or licensee, as the case may be, be a participant in good standing in the Prepaid Funeral Compensation Fund.

5. Clause 26 (c) of the said Act is amended by adding at the end thereof “or the *Prepaid Funeral Services Act, 1987* or the regulations thereunder”.

Commence-
ment

6. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

7. The short title of this Act is the *Funeral Services Amendment Act, 1987*.

Bill 29

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. J. Eakins
Minister of Municipal Affairs

1st Reading November 23rd, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to provide for the restructuring of the Metropolitan Toronto Council to be composed of thirty-four members, twenty-eight of whom are to be directly elected and the remaining six to be the mayors of the area municipalities.

The principal provisions of the Bill are as follows:

The composition of the Metropolitan Council is restructured, allocating to each area municipality a specific number of councillors based on the principle of representation by population. (Subsection 2 (1))

Each area municipality is to be divided into metropolitan wards equal to the number of metropolitan councillors each municipality is entitled to with the exception of the Borough of East York which is deemed to be one metropolitan ward. (Subsections 2 (3) and (4))

Provision is made for the election of the metropolitan chairman from among the twenty-eight directly elected metropolitan councillors by all the councillors.

Although the mayors will have a vote for the chairman they will not be eligible for election as chairman. The chairman will be a full voting member. (Subsection 2 (5))

One metropolitan councillor is to be elected by electors of each metropolitan ward at the regular municipal elections and the term of office is to be three years. No member, except a mayor, may be a member of the Metropolitan Council and the council of an area municipality at the same time. (Subsections 2 (6) and (7))

The initial boundaries for the metropolitan and local wards, following input by each area municipality, shall be determined by order of the Lieutenant Governor in Council in accordance with the statutory guidelines. The order is to apply to the 1988 municipal elections.

Following the 1988 regular elections provision is made for the determination of metropolitan ward boundaries by the Municipal Board which may divide, redivide or alter any of them in accordance with the statutory guidelines and those established by the Minister. The Board may also change the boundaries of the local wards in the applicant municipality to ensure that they are within the metropolitan wards in accordance with proposed statutory guidelines. The Board's order is to take effect at the next regular elections subsequent to 1988. (Section 3)

Each member of the Metropolitan Council has only one vote including the chairman who no longer has a tie breaking vote. (Section 5)

The Metropolitan Council Executive Committee is abolished. The Council may establish an Executive Committee with such duties assigned to it as it considers expedient. (Section 9)

Area municipality boards of control are abolished. (Section 10)

Authority is granted to the Municipal Board, after December 1, 1988, on the application of an area municipality or on petition of its electors, to alter local wards of area municipality and council composition, subject to the requirement that local wards structure be congruent with that of the metropolitan wards. (Section 12)

Bill 29

1987

**An Act to amend the
Municipality of Metropolitan Toronto Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 18, section 1, is further amended by adding thereto the following clauses:

(ga) “local ward” means a ward established for the purpose of electing a councillor or councillors to the council of an area municipality;

.

(ja) “metropolitan councillor” means a person described in clauses 5 (1) (b) to (g);

.

(ka) “metropolitan ward” means a ward established for the purpose of electing a metropolitan councillor to the Metropolitan Council.

(2) Clauses 1 (l) and (m) of the said Act are repealed and the following substituted therefor:

(l) “Minister” means the Minister of Municipal Affairs;

(m) “Ministry” means the Ministry of Municipal Affairs.

2.—(1) Subsection 5 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 2, is repealed and the following substituted therefor:

(1) The Metropolitan Council shall be composed of,

Composition
of
Metropolitan
Council

- (a) the head of council of each area municipality;
- (b) one person elected by the electors of the area municipality of the Borough of East York;
- (c) four persons elected by the electors of the area municipality of the City of Etobicoke;
- (d) seven persons elected by the electors of the area municipality of the City of North York;
- (e) six persons elected by the electors of the area municipality of the City of Scarborough;
- (f) eight persons elected by the electors of the area municipality of the City of Toronto; and
- (g) two persons elected by the electors of the area municipality of the City of York.

(2) Subsection 5 (2) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed.

(3) Subsection 5 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 2, section 1, is repealed and the following substituted therefor:

Division into
metropolitan
wards

(3) Subject to subsection (4), and in accordance with section 5a, each area municipality shall be divided into a number of metropolitan wards equal to the number of metropolitan councillors provided for in subsection (1).

(4) Subsection 5 (4) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

Deeming
provision

(4) The Borough of East York shall be deemed to be one metropolitan ward.

(5) Subsections 5 (5), (6), (7) and (8) of the said Act are repealed and the following substituted therefor:

Election by
ward

(5) One metropolitan councillor shall be elected by the electors of each metropolitan ward.

Time of
election,
term of
office

(6) The election of the metropolitan councillors as provided for in subsections (1) and (5) shall be held at the regular elections, and the metropolitan councillors so elected shall hold office for a three year term and until their successors are elected and the new Metropolitan Council is organized.

(7) A person is eligible to be elected a metropolitan councillor for an area municipality if he or she is eligible to be elected a member of the council of that area municipality under the *Municipal Elections Act*, or to be appointed to fill a vacancy in the office of a member so elected, but no person, except a head of the council of an area municipality, may be a member of the Metropolitan Council and the council of an area municipality at the same time.

Eligibility for office of metropolitan councillor
R.S.O. 1980, c. 308

3. The said Act is amended by adding thereto the following sections:

5a.—(1) Each area municipality shall, within sixty days of the date upon which this section comes into force, submit to the Minister a proposal with respect to the boundaries of the metropolitan wards, the number of local wards and their boundaries and the number of councillors to be elected from each local ward in that area municipality.

Proposal to be submitted to Minister

(2) The proposal of each area municipality shall be consistent with the criteria set out in subsections (4), (5) and (6).

Nature of proposal

(3) After the expiration of the time for the submission of proposals by the area municipalities, the Minister shall submit to the Lieutenant Governor in Council a recommendation with respect to,

Minister to submit proposal to Lieutenant Governor in Council

- (a) the boundaries to be established for metropolitan wards;
- (b) the number of local wards;
- (c) the boundaries to be established for local wards; and
- (d) the number of councillors to be elected from each local ward,

in each area municipality.

(4) The recommendation under subsection (3) shall provide for the establishment of,

Criteria for recommendation

- (a) the number of metropolitan wards in each area municipality that is equal to the number of persons to be elected to the Metropolitan Council from that area municipality under subsection 5 (1); and
- (b) such number of local wards in each area municipality as the Minister may recommend provided there

are not less than two local wards in any area municipality.

Boundaries
of local
wards

(5) Where the Minister recommends the establishment of a number of local wards in an area municipality that is equal to the number of metropolitan wards in that area municipality, the boundaries of the local wards shall be identical to the boundaries of the metropolitan wards in that area municipality.

Idem

(6) Where the Minister recommends the establishment of a number of local wards in an area municipality that is a multiple in whole numbers of the number of metropolitan wards in that area municipality, each local ward shall be located entirely within one metropolitan ward.

Number of
councillors
from each
local ward

(7) Subject to clause 152 (1) (b), the Minister shall recommend to the Lieutenant Governor in Council the number of councillors to be elected from the local wards in each area municipality.

Order

(8) Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council shall, by order, subject to subsections (4), (5), (6) and (7), establish in each area municipality,

- (a) the boundaries of the metropolitan wards;
- (b) the number of local wards;
- (c) the boundaries of the local wards; and
- (d) the number of councillors to be elected from each local ward.

Criteria for
different
recommend-
ation

(9) Notwithstanding clause (4) (a), subsections (8), 5 (3) and 5 (5), the Minister may recommend, and the Lieutenant Governor in Council may establish, a number of metropolitan wards in an area municipality that is less than the number of persons to be elected to the Metropolitan Council from that area municipality under subsection 5 (1) if an equal number of persons are to be elected from each metropolitan ward in that area municipality.

Alteration of
metropolitan
wards by
O.M.B.

R.S.O. 1980,
c. 302

5b.—(1) Notwithstanding the *Municipal Act*, upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of electors of that area municipality under section 13 of the *Municipal Act*, the Municipal Board may, after the 1st day of December, 1988,

by order, divide, redivide or alter any or all of the metropolitan wards within that area municipality.

(2) In making an order under subsection (1), the Municipal Board shall, Contents of order

- (a) establish in the area municipality a number of metropolitan wards equal to the number of metropolitan councillors to be elected from that area municipality;
- (b) have regard for the guidelines for the delineation of metropolitan wards established by the Minister;
- (c) designate the name or number each metropolitan ward shall bear; and
- (d) divide, redivide or alter any or all of the local wards in that area municipality in accordance with subsection 152b (2), and designate the name or number each local ward shall bear.

(3) An order made under subsection (1) shall come into effect on the 1st day of December in the year in which regular elections under the *Municipal Elections Act* occur but the regular elections held in that year shall be conducted as if the order was in effect. Effective date of order
R.S.O. 1980,
c. 308

(4) Where the Minister inquires into the structure, organization and methods of operation of one or more area municipalities or the Metropolitan Corporation, the Minister may give notice to the Municipal Board of such inquiry and that any application and any petition made under subsection (1) should be deferred until the inquiry has been completed and thereupon all proceedings in any such application are stayed until the Minister gives notice to the Municipal Board that they may be continued. Inquiry by Minister

5c.—(1) At the first meeting of the Metropolitan Council in each year after a regular election at which a quorum is present, the Metropolitan Council shall organize as a council and elect as chairman a metropolitan councillor to hold office for the term of the council and until his or her successor is elected or appointed in accordance with this Act. Election of chairman

(2) The chairman may be elected by secret ballot if so decided by resolution of the Metropolitan Council. Secret ballot

(3) The clerk of the Metropolitan Corporation shall preside at each such first meeting or, if there is no clerk, the members Clerk to preside

present shall select a member to preside, and the person so selected may vote as a member.

Adjournment

(4) If, at such first meeting after a regular election, a chairman is not elected, the presiding officer may adjourn the meeting and, if a chairman is not elected at any adjourned meeting held within one week after the first meeting, the Lieutenant Governor in Council shall appoint a metropolitan councillor as chairman to hold office for the term of the council and until his or her successor is elected or appointed in accordance with this Act.

4.—(1) Subsection 6 (1) of the said Act is amended by striking out “after the councils of the area municipalities have held their first meetings under subsection (2), but in any event” in the second, third and fourth lines.

(2) Subsections 6 (3) and (4) of the said Act are repealed and the following substituted therefor:

Certification
of qualifi-
cation

(3) Where a person is elected as a member of the Metropolitan Council or is elected or appointed as mayor of an area municipality, the clerk of the area municipality forthwith after the election or appointment, shall certify under the seal of the area municipality to the clerk of the Metropolitan Corporation the name of each person who has been so elected or appointed, and the person shall not take the seat on the Metropolitan Council to which the person has become entitled until the clerk of the Metropolitan Corporation has received such a certificate in respect of that person.

5. Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

Votes

(2) Each member of the Metropolitan Council has only one vote.

6. Section 9 of the said Act is repealed and the following substituted therefor:

Term of
office, heads
of council

9. The members of the Metropolitan Council who are heads of council hold office while they hold the office that entitled them to such membership.

7.—(1) Subsection 10 (1) of the said Act is amended by striking out “person” in the third line and inserting in lieu thereof “metropolitan councillor”.

(2) Subsection 10 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a vacancy occurs in the office of the chairman who has been elected under subsection 5c (1), the Metropolitan Council shall, at a general or special meeting to be held within twenty days after the vacancy occurs, elect a chairman who shall be a metropolitan councillor to hold office for the remainder of the term of his or her predecessor. Idem

(3) Subsection 10 (3) of the said Act is amended by striking out "person" in the third line and inserting in lieu thereof "metropolitan councillor".

(4) Clause 10 (3c) (b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 29, section 2, is amended by striking out "member of the council of an area municipality" in the first and second lines and inserting in lieu thereof "metropolitan councillor".

(5) Subsection 10 (3e) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 29, section 2, is amended by striking out "or the council of the area municipality, as the case may be" in the third and fourth lines.

(6) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 2, section 2, is repealed and the following substituted therefor:

(4) Where a vacancy occurs on or before the 31st day of March of an election year, as defined in the *Municipal Elections Act*, in the office of a member who is a metropolitan councillor, Vacancies
R.S.O. 1980,
c. 308

(a) the Metropolitan Council shall appoint a person to fill that vacancy, and sections 45 and 47 of the *Municipal Act* apply with necessary modifications to the filling of every such vacancy; or R.S.O. 1980,
c. 302

(b) the clerk of the area municipality for which the vacancy occurs shall hold an election to fill the vacancy in accordance with section 92 of the *Municipal Elections Act*,

as determined by by-law of the Metropolitan Council.

(4a) Where a vacancy occurs after the 31st day of March of an election year, as defined in the *Municipal Elections Act*, in the office of a member who is a metropolitan councillor, the Metropolitan Council shall fill every such vacancy and subsection 46 (3) of the *Municipal Act* applies with necessary modifications to the filling of the vacancy. Idem

(7) Subsection 10 (5) of the said Act is repealed and the following substituted therefor:

Election
expenses

(5) The Metropolitan Corporation shall pay all reasonable expenses incurred by the area municipality with respect to the election under clause (4) (b).

Resignation
of chairman

(6) The chairman may resign his or her office by notice in writing filed with the clerk of the Metropolitan Corporation and the office then becomes vacant.

Vacancy
when council
not in session

(7) Where for any cause a vacancy occurs in the office of the chairman when the Metropolitan Council is not in session, the clerk of the Metropolitan Corporation shall forthwith notify the members of the vacancy and, if required in writing to do so by a majority of them, the clerk shall call a special meeting of the Metropolitan Council to fill the vacancy.

8. Section 11 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 29, section 3, 1984, chapter 18, section 3 and 1985, chapter 2, section 3, is repealed.

9. Section 13 of the said Act is repealed and the following substituted therefor:

Committees

13.—(1) The Metropolitan Council may establish standing or other committees, including an executive committee, and assign to them such duties as it considers expedient.

Chairman of
executive
committee

(2) Where the Metropolitan Council establishes an executive committee, the chairman of the Metropolitan Council shall be the chairman of and a member of such committee.

Delegation to
executive
committee

(3) If the Metropolitan Council establishes an executive committee, the Metropolitan Council may by by-law,

(a) authorize the executive committee to exercise the powers set out in section 12 and subsection 97 (3); and

(b) delegate authority to the executive committee under section 200.

10.—(1) Subsection 152 (1) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

Composition
of council

(1) The council of each area municipality shall be composed of a mayor elected by general vote who shall be the head of council and,

- (a) if the area municipality has two or three wards, two or three councillors for each ward; or
- (b) if the area municipality has four or more wards, one, two or three councillors for each ward.

(2) Subsection 152 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

(2) The council of each area municipality may establish standing or other committees and assign to them such duties as it considers expedient. Committees

(3) Subsections 152 (3) and (4) of the said Act are repealed and the following substituted therefor:

(3) Notwithstanding sections 67 and 68 of the *Municipal Act*, no area municipality shall have a board of control. No boards of control
R.S.O. 1980,
c. 302

(4) Subsection 152 (5) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 12, is repealed.

11. Section 152a of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 2, section 4 and amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed.

12. The said Act is further amended by adding thereto the following section:

152b.—(1) Notwithstanding the *Municipal Act*, upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of the electors of that area municipality in accordance with section 13 of the *Municipal Act*, the Municipal Board may, after the 1st day of December, 1988, by order, Alteration of
local wards
by O.M.B.

- (a) divide or redivide the area municipality into two or more local wards and shall designate the name or number each local ward shall bear;
- (b) alter any or all of the local wards in the area municipality; or
- (c) subject to subsection 152 (1), vary the composition of the council of the area municipality,

provided that the mayor of the area municipality shall continue to be elected by a general vote of the electors of the area municipality, shall be the head of council of the area

municipality, and shall be a member of the Metropolitan Council.

Contents of
order

(2) In making an order under subsection (1), the Municipal Board shall, subject to clause (1) (a),

- (a) establish in the area municipality a number of local wards equal to the number of metropolitan wards in that area municipality with the boundaries of the local wards being identical to the boundaries of the metropolitan wards in that area municipality; or
- (b) establish in the area municipality a number of local wards equal to a multiple in whole numbers of the number of metropolitan wards in that area municipality and divide or redivide each of the metropolitan wards into two or more local wards, as the case may be, but each local ward shall be located entirely within one metropolitan ward.

Effective
date of order

R.S.O. 1980,
c. 308

(3) An order made under subsection (1) shall come into effect on the 1st day of December in the year in which regular elections under the *Municipal Elections Act* occur but the regular elections held in that year shall be conducted as if the order was in effect.

Inquiry by
Minister

(4) Where the Minister inquires into the structure, organization and methods of operation of one or more area municipalities or the Metropolitan Corporation, the Minister may give notice to the Municipal Board of such inquiry and that any application and any petition made under subsection (1) should be deferred until the inquiry has been completed and thereupon all proceedings in any such application are stayed until the Minister gives notice to the Municipal Board that they may be continued.

13. Subsection 245 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 17, is amended by inserting after "78b" in the second line "subsection 9 (1), sections".

Transitional
and repeal

14. Section 5a of the said Act, as enacted by section 3 of this Act, is repealed on the 1st day of December, 1988 but any order of the Lieutenant Governor in Council under section 5a remains valid until altered by an order of the Municipal Board under section 5b.

Commence-
ment

15.—(1) This Act, except section 2, sections 4 to 11 and section 13, comes into force on the day it receives Royal Assent.

(2) Section 2, sections 4 to 11 and section 13 come into force on the 1st day of December, 1988. Idem

(3) Notwithstanding subsection (2), the regular elections to be held in 1988 under the *Municipal Elections Act* in the area municipalities shall be conducted as if section 2, sections 4 to 11 and section 13 were in force. Idem
R.S.O. 1980,
c. 308

16. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1987*. Short title

Bill 29

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. J. Eakins
Minister of Municipal Affairs



1st Reading November 23rd, 1987
2nd Reading January 7th, 1988
3rd Reading
Royal Assent

(Reprinted as amended by the General Government Committee)

EXPLANATORY NOTES

The purpose of the Bill is to provide for the restructuring of the Metropolitan Toronto Council to be composed of thirty-four members, twenty-eight of whom are to be directly elected and the remaining six to be the mayors of the area municipalities.

The principal provisions of the Bill are as follows:

The composition of the Metropolitan Council is restructured, allocating to each area municipality a specific number of councillors based on the principle of representation by population. (Subsection 2 (1))

Each area municipality is to be divided into metropolitan wards equal to the number of metropolitan councillors each municipality is entitled to with the exception of the Borough of East York which is deemed to be one metropolitan ward. (Subsections 2 (3) and (4))

Provision is made for the election of the metropolitan chairman from among the twenty-eight directly elected metropolitan councillors by all the councillors.

Although the mayors will have a vote for the chairman they will not be eligible for election as chairman. The chairman will be a full voting member. (Subsection 2 (5))

One metropolitan councillor is to be elected by electors of each metropolitan ward at the regular municipal elections and the term of office is to be three years. No member, except a mayor, may be a member of the Metropolitan Council and the council of an area municipality at the same time. (Subsections 2 (6) and (7))

The initial boundaries for the metropolitan and local wards, following input by each area municipality, shall be determined by order of the Lieutenant Governor in Council in accordance with the statutory guidelines. The order is to apply to the 1988 municipal elections.

Following the 1988 regular elections provision is made for the determination of metropolitan ward boundaries by the Municipal Board which may divide, redivide or alter any of them in accordance with the statutory guidelines and those established by the Minister. The Board may also change the boundaries of the local wards in the applicant municipality to ensure that they are within the metropolitan wards in accordance with proposed statutory guidelines. The Board's order is to take effect at the next regular elections subsequent to 1988. (Section 3)

Each member of the Metropolitan Council has only one vote including the chairman who no longer has a tie breaking vote. (Section 5)

The Metropolitan Council Executive Committee is abolished. The Council may establish an Executive Committee with such duties assigned to it as it considers expedient. (Section 9)

Area municipality boards of control are abolished. (Section 10)

Authority is granted to the Municipal Board, after December 1, 1988, on the application of an area municipality or on petition of its electors, to alter local wards of area municipality and council composition, subject to the requirement that local wards structure be congruent with that of the metropolitan wards. (Section 12)

An Act to amend the Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 18, section 1, is further amended by adding thereto the following clauses:

(ga) “local ward” means a ward established for the purpose of electing a councillor or councillors to the council of an area municipality;

.

(ja) “metropolitan councillor” means a person described in clauses 5 (1) (b) to (g);

.

(ka) “metropolitan ward” means a ward established for the purpose of electing a metropolitan councillor to the Metropolitan Council.

(2) Clauses 1 (l) and (m) of the said Act are repealed and the following substituted therefor:

(l) “Minister” means the Minister of Municipal Affairs;

(m) “Ministry” means the Ministry of Municipal Affairs.

2.—(1) Subsection 5 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 2, is repealed and the following substituted therefor:

(1) The Metropolitan Council shall be composed of,

Composition
of
Metropolitan
Council

- (a) the head of council of each area municipality;
- (b) one person elected by the electors of the area municipality of the Borough of East York;
- (c) four persons elected by the electors of the area municipality of the City of Etobicoke;
- (d) seven persons elected by the electors of the area municipality of the City of North York;
- (e) six persons elected by the electors of the area municipality of the City of Scarborough;
- (f) eight persons elected by the electors of the area municipality of the City of Toronto; and
- (g) two persons elected by the electors of the area municipality of the City of York.

(2) Subsection 5 (2) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed.

(3) Subsection 5 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 2, section 1, is repealed and the following substituted therefor:

Division into
metropolitan
wards

(3) Subject to subsection (4), and in accordance with section 5a, each area municipality shall be divided into a number of metropolitan wards equal to the number of metropolitan councillors provided for in subsection (1).

(4) Subsection 5 (4) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

Deeming
provision

(4) The Borough of East York shall be deemed to be one metropolitan ward.

(5) Subsections 5 (5), (6), (7) and (8) of the said Act are repealed and the following substituted therefor:

Election by
ward

(5) One metropolitan councillor shall be elected by the electors of each metropolitan ward.

Time of
election,
term of
office

(6) The election of the metropolitan councillors as provided for in subsections (1) and (5) shall be held at the regular elections, and the metropolitan councillors so elected shall hold office for a three year term and until their successors are elected and the new Metropolitan Council is organized.

(7) A person is eligible to be elected a metropolitan councillor for an area municipality if he or she is eligible to be elected a member of the council of that area municipality under the *Municipal Elections Act*, or to be appointed to fill a vacancy in the office of a member so elected, but no person, except a head of the council of an area municipality, may be a member of the Metropolitan Council and the council of an area municipality at the same time.

Eligibility for office of metropolitan councillor
R.S.O. 1980, c. 308

3. The said Act is amended by adding thereto the following sections:

5a.—(1) Each area municipality shall, within thirty days of the date upon which this section comes into force, submit to the Minister a proposal with respect to the boundaries of the metropolitan wards, the number of local wards and their boundaries and the number of councillors to be elected from each local ward in that area municipality.

Proposal to be submitted to Minister

(2) The proposal of each area municipality shall be consistent with the criteria set out in subsections (4), (5) and (6).

Nature of proposal

(3) After the expiration of the time for the submission of proposals by the area municipalities, the Minister shall submit to the Lieutenant Governor in Council a recommendation with respect to,

Minister to submit proposal to Lieutenant Governor in Council

- (a) the boundaries to be established for metropolitan wards;
- (b) the number of local wards;
- (c) the boundaries to be established for local wards; and
- (d) the number of councillors to be elected from each local ward,

in each area municipality.

(4) The recommendation under subsection (3) shall provide for the establishment of,

Criteria for recommendation

- (a) the number of metropolitan wards in each area municipality that is equal to the number of persons to be elected to the Metropolitan Council from that area municipality under subsection 5 (1); and
- (b) such number of local wards in each area municipality as the Minister may recommend provided there

are not less than two local wards in any area municipality.

Boundaries
of local
wards

(5) Where the Minister recommends the establishment of a number of local wards in an area municipality that is equal to the number of metropolitan wards in that area municipality, the boundaries of the local wards shall be identical to the boundaries of the metropolitan wards in that area municipality.

Idem

(6) Where the Minister recommends the establishment of a number of local wards in an area municipality that is a multiple in whole numbers of the number of metropolitan wards in that area municipality, each local ward shall be located entirely within one metropolitan ward.

Number of
councillors
from each
local ward

(7) Subject to clause 152 (1) (b), the Minister shall recommend to the Lieutenant Governor in Council the number of councillors to be elected from the local wards in each area municipality.

Order

(8) Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council shall, by order, subject to subsections (4), (5), (6) and (7), establish in each area municipality,

- (a) the boundaries of the metropolitan wards;
- (b) the number of local wards;
- (c) the boundaries of the local wards; and
- (d) the number of councillors to be elected from each local ward.

Criteria for
different
recommen-
dation

(9) Notwithstanding clause (4) (a), subsections (8), 5 (3) and 5 (5), the Minister may recommend, and the Lieutenant Governor in Council may establish, a number of metropolitan wards in an area municipality that is less than the number of persons to be elected to the Metropolitan Council from that area municipality under subsection 5 (1) if an equal number of persons are to be elected from each metropolitan ward in that area municipality.

Alteration of
metropolitan
wards by
O.M.B.
R.S.O. 1980,
c. 302

5b.—(1) Notwithstanding the *Municipal Act*, upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of electors of that area municipality under section 13 of the *Municipal Act*, the Municipal Board may, after the 1st day of December, 1988,

by order, divide, redivide or alter any or all of the metropolitan wards within that area municipality.

(2) In making an order under subsection (1), the Municipal Board shall, Contents of order

- (a) establish in the area municipality a number of metropolitan wards equal to the number of metropolitan councillors to be elected from that area municipality;
- (b) have regard for the guidelines for the delineation of metropolitan wards established by the Minister;
- (c) designate the name or number each metropolitan ward shall bear; and
- (d) divide, redivide or alter any or all of the local wards in that area municipality in accordance with subsection 152b (2), and designate the name or number each local ward shall bear.

(3) An order made under subsection (1) shall come into effect on the 1st day of December in the year in which regular elections under the *Municipal Elections Act* occur but the regular elections held in that year shall be conducted as if the order was in effect. Effective date of order
R.S.O. 1980,
c. 308

(4) Where the Minister inquires into the structure, organization and methods of operation of one or more area municipalities or the Metropolitan Corporation, the Minister may give notice to the Municipal Board of such inquiry and that any application and any petition made under subsection (1) should be deferred until the inquiry has been completed and thereupon all proceedings in any such application or petition are stayed until the Minister gives notice to the Municipal Board that they may be continued. Inquiry by Minister

5c.—(1) At the first meeting of the Metropolitan Council in each year after a regular election at which a quorum is present, the Metropolitan Council shall organize as a council and elect as chairman a metropolitan councillor to hold office for the term of the council and until his or her successor is elected or appointed in accordance with this Act. Election of chairman

(2) The chairman may be elected by secret ballot if so decided by resolution of the Metropolitan Council. Secret ballot

(3) The clerk of the Metropolitan Corporation shall preside at each such first meeting or, if there is no clerk, the members Clerk to preside

present shall select a member to preside, and the person so selected may vote as a member.

Adjournment

(4) If, at such first meeting after a regular election, a chairman is not elected, the presiding officer may adjourn the meeting and, if a chairman is not elected at any adjourned meeting held within one week after the first meeting, the Lieutenant Governor in Council shall appoint a metropolitan councillor as chairman to hold office for the term of the council and until his or her successor is elected or appointed in accordance with this Act.

4.—(1) Subsection 6 (1) of the said Act is amended by striking out “after the councils of the area municipalities have held their first meetings under subsection (2), but in any event” in the second, third and fourth lines.

(2) Subsections 6 (3) and (4) of the said Act are repealed and the following substituted therefor:

Certification
of qualifi-
cation

(3) Where a person is elected as a member of the Metropolitan Council or is elected or appointed as mayor of an area municipality, the clerk of the area municipality forthwith after the election or appointment, shall certify under the seal of the area municipality to the clerk of the Metropolitan Corporation the name of each person who has been so elected or appointed, and the person shall not take the seat on the Metropolitan Council to which the person has become entitled until the clerk of the Metropolitan Corporation has received such a certificate in respect of that person.

5. Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

Votes

(2) Each member of the Metropolitan Council has only one vote.

6. Section 9 of the said Act is repealed and the following substituted therefor:

Term of
office, heads
of council

9. The members of the Metropolitan Council who are heads of council hold office while they hold the office that entitled them to such membership.

7.—(1) Subsection 10 (1) of the said Act is amended by striking out “person” in the third line and inserting in lieu thereof “metropolitan councillor”.

(2) Subsection 10 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a vacancy occurs in the office of the chairman who has been elected under subsection 5c (1), the Metropolitan Council shall, at a general or special meeting to be held within twenty days after the vacancy occurs, elect a chairman who shall be a metropolitan councillor to hold office for the remainder of the term of his or her predecessor. Idem

(3) Subsection 10 (3) of the said Act is amended by striking out "person" in the third line and inserting in lieu thereof "metropolitan councillor".

(4) Clause 10 (3c) (b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 29, section 2, is amended by striking out "member of the council of an area municipality" in the first and second lines and inserting in lieu thereof "metropolitan councillor".

(5) Subsection 10 (3e) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 29, section 2, is amended by striking out "or the council of the area municipality, as the case may be" in the third and fourth lines.

(6) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 2, section 2, is repealed and the following substituted therefor:

(4) Where a vacancy occurs on or before the 31st day of March of an election year, as defined in the *Municipal Elections Act*, in the office of a member who is a metropolitan councillor, Vacancies
R.S.O. 1980,
c. 308

(a) the Metropolitan Council shall appoint a person to fill that vacancy, and sections 45 and 47 of the *Municipal Act* apply with necessary modifications to the filling of every such vacancy; or R.S.O. 1980,
c. 302

(b) the clerk of the area municipality for which the vacancy occurs shall hold an election to fill the vacancy in accordance with section 92 of the *Municipal Elections Act*,

as determined by by-law of the Metropolitan Council.

(4a) Where a vacancy occurs after the 31st day of March of an election year, as defined in the *Municipal Elections Act*, in the office of a member who is a metropolitan councillor, the Metropolitan Council shall fill every such vacancy and subsection 46 (3) of the *Municipal Act* applies with necessary modifications to the filling of the vacancy. Idem



(7) Section 10 of the said Act is amended by adding thereto the following subsection:

Where head
of council
incapacitated

(4b) In the event that the head of a council of an area municipality is for any incapacity unable to fulfil the duties as a member of the Metropolitan Council for a period exceeding one month, the council of the area municipality may by by-law appoint one of its members as an alternate representative to the Metropolitan Council who shall act in the place and stead of the head of council during the incapacity but no such by-law shall have effect for a period longer than one month from its effective date.



(8) Subsection 10 (5) of the said Act is repealed and the following substituted therefor:

Election
expenses

(5) The Metropolitan Corporation shall pay all reasonable expenses incurred by the area municipality with respect to the election under clause (4) (b).

Resignation
of chairman

(6) The chairman may resign his or her office by notice in writing filed with the clerk of the Metropolitan Corporation and the office then becomes vacant.

Vacancy
when council
not in session

(7) Where for any cause a vacancy occurs in the office of the chairman when the Metropolitan Council is not in session, the clerk of the Metropolitan Corporation shall forthwith notify the members of the vacancy and, if required in writing to do so by a majority of them, the clerk shall call a special meeting of the Metropolitan Council to fill the vacancy.

8. Section 11 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 29, section 3, 1984, chapter 18, section 3 and 1985, chapter 2, section 3, is repealed.

9. Section 13 of the said Act is repealed and the following substituted therefor:

Committees

13.—(1) The Metropolitan Council may establish standing or other committees, including an executive committee, and assign to them such duties as it considers expedient.

Chairman of
executive
committee

(2) Where the Metropolitan Council establishes an executive committee, the chairman of the Metropolitan Council shall be the chairman of and a member of such committee.

Delegation to
executive
committee

(3) If the Metropolitan Council establishes an executive committee, the Metropolitan Council may by by-law,

- (a) authorize the executive committee to exercise the powers set out in section 12 and subsection 97 (3); and
- (b) delegate authority to the executive committee under section 200.

10.—(1) Subsection 152 (1) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

(1) The council of each area municipality shall be composed of a mayor elected by general vote who shall be the head of council and, Composition
of council

- (a) if the area municipality has two or three wards, two or three councillors for each ward; or
- (b) if the area municipality has four or more wards, one, two or three councillors for each ward.

(2) Subsection 152 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

(2) The council of each area municipality may establish standing or other committees and assign to them such duties as it considers expedient. Committees

(3) Subsections 152 (3) and (4) of the said Act are repealed and the following substituted therefor:

(3) Notwithstanding sections 67 and 68 of the *Municipal Act*, no area municipality shall have a board of control. No boards of
control
R.S.O. 1980,
c. 302

(4) Subsection 152 (5) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 12, is repealed.

11. Section 152a of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 2, section 4 and amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed.

12. The said Act is further amended by adding thereto the following section:

152b.—(1) Notwithstanding the *Municipal Act*, upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of the electors of that area municipality in accordance with section 13 of the Alteration of
local wards
by O.M.B.

Municipal Act, the Municipal Board may, after the 1st day of December, 1988, by order,

- (a) divide or redivide the area municipality into two or more local wards and shall designate the name or number each local ward shall bear;
- (b) alter any or all of the local wards in the area municipality; or
- (c) subject to subsection 152 (1), vary the composition of the council of the area municipality,

provided that the mayor of the area municipality shall continue to be elected by a general vote of the electors of the area municipality, shall be the head of council of the area municipality, and shall be a member of the Metropolitan Council.

Contents of
order

(2) In making an order under subsection (1), the Municipal Board shall, subject to clause (1) (a),

- (a) establish in the area municipality a number of local wards equal to the number of metropolitan wards in that area municipality with the boundaries of the local wards being identical to the boundaries of the metropolitan wards in that area municipality; or
- (b) establish in the area municipality a number of local wards equal to a multiple in whole numbers of the number of metropolitan wards in that area municipality and divide or redivide each of the metropolitan wards into two or more local wards, as the case may be, but each local ward shall be located entirely within one metropolitan ward.

Effective
date of order

R.S.O. 1980,
c. 308

(3) An order made under subsection (1) shall come into effect on the 1st day of December in the year in which regular elections under the *Municipal Elections Act* occur but the regular elections held in that year shall be conducted as if the order was in effect.

Inquiry by
Minister

(4) Where the Minister inquires into the structure, organization and methods of operation of one or more area municipalities or the Metropolitan Corporation, the Minister may give notice to the Municipal Board of such inquiry and that any application and any petition made under subsection (1) should be deferred until the inquiry has been completed and thereupon all proceedings in any such application or petition

are stayed until the Minister gives notice to the Municipal Board that they may be continued.

13. Subsection 245 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 17, is amended by inserting after "78b" in the second line "subsection 9 (1), sections".

14. Section 5a of the said Act, as enacted by section 3 of this Act, is repealed on the 1st day of December, 1988 but any order of the Lieutenant Governor in Council under section 5a remains valid until altered by an order of the Municipal Board under section 5b. Transitional
and repeal

15.—(1) This Act, except section 2, sections 4 to 11 and section 13, comes into force on the day it receives Royal Assent. Commence-
ment

(2) Section 2, sections 4 to 11 and section 13 come into force on the 1st day of December, 1988. Idem

(3) Notwithstanding subsection (2), the regular elections to be held in 1988 under the *Municipal Elections Act* in the area municipalities shall be conducted as if section 2, sections 4 to 11 and section 13 were in force. Idem
R.S.O. 1980,
c. 308

16. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1988*. Short title

Bill 29

(Chapter 19
Statutes of Ontario, 1988)

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. J. Eakins
Minister of Municipal Affairs



<i>1st Reading</i>	November 23rd, 1987
<i>2nd Reading</i>	January 7th, 1988
<i>3rd Reading</i>	February 8th, 1988
<i>Royal Assent</i>	February 11th, 1988

(Reprint—Correction of printing error—s. 13)

Bill 29

1987

**An Act to amend the
Municipality of Metropolitan Toronto Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 18, section 1, is further amended by adding thereto the following clauses:

(ga) “local ward” means a ward established for the purpose of electing a councillor or councillors to the council of an area municipality;

.

(ja) “metropolitan councillor” means a person described in clauses 5 (1) (b) to (g);

.

(ka) “metropolitan ward” means a ward established for the purpose of electing a metropolitan councillor to the Metropolitan Council.

(2) Clauses 1 (l) and (m) of the said Act are repealed and the following substituted therefor:

(l) “Minister” means the Minister of Municipal Affairs;

(m) “Ministry” means the Ministry of Municipal Affairs.

2.—(1) Subsection 5 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 2, is repealed and the following substituted therefor:

(1) The Metropolitan Council shall be composed of,

Composition
of
Metropolitan
Council

- (a) the head of council of each area municipality;
- (b) one person elected by the electors of the area municipality of the Borough of East York;
- (c) four persons elected by the electors of the area municipality of the City of Etobicoke;
- (d) seven persons elected by the electors of the area municipality of the City of North York;
- (e) six persons elected by the electors of the area municipality of the City of Scarborough;
- (f) eight persons elected by the electors of the area municipality of the City of Toronto; and
- (g) two persons elected by the electors of the area municipality of the City of York.

(2) Subsection 5 (2) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed.

(3) Subsection 5 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 2, section 1, is repealed and the following substituted therefor:

Division into
metropolitan
wards

(3) Subject to subsection (4), and in accordance with section 5a, each area municipality shall be divided into a number of metropolitan wards equal to the number of metropolitan councillors provided for in subsection (1).

(4) Subsection 5 (4) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

Deeming
provision

(4) The Borough of East York shall be deemed to be one metropolitan ward.

(5) Subsections 5 (5), (6), (7) and (8) of the said Act are repealed and the following substituted therefor:

Election by
ward

(5) One metropolitan councillor shall be elected by the electors of each metropolitan ward.

Time of
election,
term of
office

(6) The election of the metropolitan councillors as provided for in subsections (1) and (5) shall be held at the regular elections, and the metropolitan councillors so elected shall hold office for a three year term and until their successors are elected and the new Metropolitan Council is organized.

(7) A person is eligible to be elected a metropolitan councillor for an area municipality if he or she is eligible to be elected a member of the council of that area municipality under the *Municipal Elections Act*, or to be appointed to fill a vacancy in the office of a member so elected, but no person, except a head of the council of an area municipality, may be a member of the Metropolitan Council and the council of an area municipality at the same time.

Eligibility for
office of
metropolitan
councillor

R.S.O. 1980,
c. 308

3. The said Act is amended by adding thereto the following sections:

5a.—(1) Each area municipality shall, within thirty days of the date upon which this section comes into force, submit to the Minister a proposal with respect to the boundaries of the metropolitan wards, the number of local wards and their boundaries and the number of councillors to be elected from each local ward in that area municipality.

Proposal to
be submitted
to Minister

(2) The proposal of each area municipality shall be consistent with the criteria set out in subsections (4), (5) and (6).

Nature of
proposal

(3) After the expiration of the time for the submission of proposals by the area municipalities, the Minister shall submit to the Lieutenant Governor in Council a recommendation with respect to,

Minister to
submit
proposal to
Lieutenant
Governor in
Council

- (a) the boundaries to be established for metropolitan wards;
- (b) the number of local wards;
- (c) the boundaries to be established for local wards; and
- (d) the number of councillors to be elected from each local ward,

in each area municipality.

(4) The recommendation under subsection (3) shall provide for the establishment of,

Criteria for
recommen-
dation

- (a) the number of metropolitan wards in each area municipality that is equal to the number of persons to be elected to the Metropolitan Council from that area municipality under subsection 5 (1); and
- (b) such number of local wards in each area municipality as the Minister may recommend provided there

are not less than two local wards in any area municipality.

Boundaries
of local
wards

(5) Where the Minister recommends the establishment of a number of local wards in an area municipality that is equal to the number of metropolitan wards in that area municipality, the boundaries of the local wards shall be identical to the boundaries of the metropolitan wards in that area municipality.

Idem

(6) Where the Minister recommends the establishment of a number of local wards in an area municipality that is a multiple in whole numbers of the number of metropolitan wards in that area municipality, each local ward shall be located entirely within one metropolitan ward.

Number of
councillors
from each
local ward

(7) Subject to clause 152 (1) (b), the Minister shall recommend to the Lieutenant Governor in Council the number of councillors to be elected from the local wards in each area municipality.

Order

(8) Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council shall, by order, subject to subsections (4), (5), (6) and (7), establish in each area municipality,

- (a) the boundaries of the metropolitan wards;
- (b) the number of local wards;
- (c) the boundaries of the local wards; and
- (d) the number of councillors to be elected from each local ward.

Criteria for
different
recommen-
dation

(9) Notwithstanding clause (4) (a), subsections (8), 5 (3) and 5 (5), the Minister may recommend, and the Lieutenant Governor in Council may establish, a number of metropolitan wards in an area municipality that is less than the number of persons to be elected to the Metropolitan Council from that area municipality under subsection 5 (1) if an equal number of persons are to be elected from each metropolitan ward in that area municipality.

Alteration of
metropolitan
wards by
O.M.B.

R.S.O. 1980,
c. 302

5b.—(1) Notwithstanding the *Municipal Act*, upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of electors of that area municipality under section 13 of the *Municipal Act*, the Municipal Board may, after the 1st day of December, 1988,

by order, divide, redivide or alter any or all of the metropolitan wards within that area municipality.

(2) In making an order under subsection (1), the Municipal Board shall, Contents of order

- (a) establish in the area municipality a number of metropolitan wards equal to the number of metropolitan councillors to be elected from that area municipality;
- (b) have regard for the guidelines for the delineation of metropolitan wards established by the Minister;
- (c) designate the name or number each metropolitan ward shall bear; and
- (d) divide, redivide or alter any or all of the local wards in that area municipality in accordance with subsection 152b (2), and designate the name or number each local ward shall bear.

(3) An order made under subsection (1) shall come into effect on the 1st day of December in the year in which regular elections under the *Municipal Elections Act* occur but the regular elections held in that year shall be conducted as if the order was in effect. Effective date of order
R.S.O. 1980,
c. 308

(4) Where the Minister inquires into the structure, organization and methods of operation of one or more area municipalities or the Metropolitan Corporation, the Minister may give notice to the Municipal Board of such inquiry and that any application and any petition made under subsection (1) should be deferred until the inquiry has been completed and thereupon all proceedings in any such application or petition are stayed until the Minister gives notice to the Municipal Board that they may be continued. Inquiry by Minister

5c.—(1) At the first meeting of the Metropolitan Council in each year after a regular election at which a quorum is present, the Metropolitan Council shall organize as a council and elect as chairman a metropolitan councillor to hold office for the term of the council and until his or her successor is elected or appointed in accordance with this Act. Election of chairman

(2) The chairman may be elected by secret ballot if so decided by resolution of the Metropolitan Council. Secret ballot

(3) The clerk of the Metropolitan Corporation shall preside at each such first meeting or, if there is no clerk, the members Clerk to preside

present shall select a member to preside, and the person so selected may vote as a member.

Adjournment

(4) If, at such first meeting after a regular election, a chairman is not elected, the presiding officer may adjourn the meeting and, if a chairman is not elected at any adjourned meeting held within one week after the first meeting, the Lieutenant Governor in Council shall appoint a metropolitan councillor as chairman to hold office for the term of the council and until his or her successor is elected or appointed in accordance with this Act.

4.—(1) Subsection 6 (1) of the said Act is amended by striking out “after the councils of the area municipalities have held their first meetings under subsection (2), but in any event” in the second, third and fourth lines.

(2) Subsections 6 (3) and (4) of the said Act are repealed and the following substituted therefor:

Certification
of qualifi-
cation

(3) Where a person is elected as a member of the Metropolitan Council or is elected or appointed as mayor of an area municipality, the clerk of the area municipality forthwith after the election or appointment, shall certify under the seal of the area municipality to the clerk of the Metropolitan Corporation the name of each person who has been so elected or appointed, and the person shall not take the seat on the Metropolitan Council to which the person has become entitled until the clerk of the Metropolitan Corporation has received such a certificate in respect of that person.

5. Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

Votes

(2) Each member of the Metropolitan Council has only one vote.

6. Section 9 of the said Act is repealed and the following substituted therefor:

Term of
office, heads
of council

9. The members of the Metropolitan Council who are heads of council hold office while they hold the office that entitled them to such membership.

7.—(1) Subsection 10 (1) of the said Act is amended by striking out “person” in the third line and inserting in lieu thereof “metropolitan councillor”.

(2) Subsection 10 (2) of the said Act is repealed and the following substituted therefor:

(2) Where a vacancy occurs in the office of the chairman who has been elected under subsection 5c (1), the Metropolitan Council shall, at a general or special meeting to be held within twenty days after the vacancy occurs, elect a chairman who shall be a metropolitan councillor to hold office for the remainder of the term of his or her predecessor. Idem

(3) Subsection 10 (3) of the said Act is amended by striking out “person” in the third line and inserting in lieu thereof “metropolitan councillor”.

(4) Clause 10 (3c) (b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 29, section 2, is amended by striking out “member of the council of an area municipality” in the first and second lines and inserting in lieu thereof “metropolitan councillor”.

(5) Subsection 10 (3e) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 29, section 2, is amended by striking out “or the council of the area municipality, as the case may be” in the third and fourth lines.

(6) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 2, section 2, is repealed and the following substituted therefor:

(4) Where a vacancy occurs on or before the 31st day of March of an election year, as defined in the *Municipal Elections Act*, in the office of a member who is a metropolitan councillor, Vacancies
R.S.O. 1980,
c. 308

- (a) the Metropolitan Council shall appoint a person to fill that vacancy, and sections 45 and 47 of the *Municipal Act* apply with necessary modifications to the filling of every such vacancy; or R.S.O. 1980,
c. 302
- (b) the clerk of the area municipality for which the vacancy occurs shall hold an election to fill the vacancy in accordance with section 92 of the *Municipal Elections Act*,

as determined by by-law of the Metropolitan Council.

(4a) Where a vacancy occurs after the 31st day of March of an election year, as defined in the *Municipal Elections Act*, in the office of a member who is a metropolitan councillor, the Metropolitan Council shall fill every such vacancy and subsection 46 (3) of the *Municipal Act* applies with necessary modifications to the filling of the vacancy. Idem

(7) Section 10 of the said Act is amended by adding thereto the following subsection:

Where head
of council
incapacitated

(4b) In the event that the head of a council of an area municipality is for any incapacity unable to fulfil the duties as a member of the Metropolitan Council for a period exceeding one month, the council of the area municipality may by by-law appoint one of its members as an alternate representative to the Metropolitan Council who shall act in the place and stead of the head of council during the incapacity but no such by-law shall have effect for a period longer than one month from its effective date.

(8) Subsection 10 (5) of the said Act is repealed and the following substituted therefor:

Election
expenses

(5) The Metropolitan Corporation shall pay all reasonable expenses incurred by the area municipality with respect to the election under clause (4) (b).

Resignation
of chairman

(6) The chairman may resign his or her office by notice in writing filed with the clerk of the Metropolitan Corporation and the office then becomes vacant.

Vacancy
when council
not in session

(7) Where for any cause a vacancy occurs in the office of the chairman when the Metropolitan Council is not in session, the clerk of the Metropolitan Corporation shall forthwith notify the members of the vacancy and, if required in writing to do so by a majority of them, the clerk shall call a special meeting of the Metropolitan Council to fill the vacancy.

8. Section 11 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 29, section 3, 1984, chapter 18, section 3 and 1985, chapter 2, section 3, is repealed.

9. Section 13 of the said Act is repealed and the following substituted therefor:

Committees

13.—(1) The Metropolitan Council may establish standing or other committees, including an executive committee, and assign to them such duties as it considers expedient.

Chairman of
executive
committee

(2) Where the Metropolitan Council establishes an executive committee, the chairman of the Metropolitan Council shall be the chairman of and a member of such committee.

Delegation to
executive
committee

(3) If the Metropolitan Council establishes an executive committee, the Metropolitan Council may by by-law,

- (a) authorize the executive committee to exercise the powers set out in section 12 and subsection 97 (3); and
- (b) delegate authority to the executive committee under section 200.

10.—(1) Subsection 152 (1) of the said Act, as amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

(1) The council of each area municipality shall be composed of a mayor elected by general vote who shall be the head of council and, Composition of council

- (a) if the area municipality has two or three wards, two or three councillors for each ward; or
- (b) if the area municipality has four or more wards, one, two or three councillors for each ward.

(2) Subsection 152 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed and the following substituted therefor:

(2) The council of each area municipality may establish standing or other committees and assign to them such duties as it considers expedient. Committees

(3) Subsections 152 (3) and (4) of the said Act are repealed and the following substituted therefor:

(3) Notwithstanding sections 67 and 68 of the *Municipal Act*, no area municipality shall have a board of control. No boards of control
R.S.O. 1980,
c. 302

(4) Subsection 152 (5) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 12, is repealed.

11. Section 152a of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 2, section 4 and amended by the Statutes of Ontario, 1987, chapter 10, section 39, is repealed.

12. The said Act is further amended by adding thereto the following section:

152b.—(1) Notwithstanding the *Municipal Act*, upon the application of an area municipality authorized by a by-law of the council thereof, or upon the petition of the electors of that area municipality in accordance with section 13 of the Alteration of local wards
by O.M.B.

R.S.O. 1980,
c. 302

Municipal Act, the Municipal Board may, after the 1st day of December, 1988, by order,

- (a) divide or redivide the area municipality into two or more local wards and shall designate the name or number each local ward shall bear;
- (b) alter any or all of the local wards in the area municipality; or
- (c) subject to subsection 152 (1), vary the composition of the council of the area municipality,

provided that the mayor of the area municipality shall continue to be elected by a general vote of the electors of the area municipality, shall be the head of council of the area municipality, and shall be a member of the Metropolitan Council.

Contents of
order

(2) In making an order under subsection (1), the Municipal Board shall, subject to clause (1) (a),

- (a) establish in the area municipality a number of local wards equal to the number of metropolitan wards in that area municipality with the boundaries of the local wards being identical to the boundaries of the metropolitan wards in that area municipality; or
- (b) establish in the area municipality a number of local wards equal to a multiple in whole numbers of the number of metropolitan wards in that area municipality and divide or redivide each of the metropolitan wards into two or more local wards, as the case may be, but each local ward shall be located entirely within one metropolitan ward.

Effective
date of order

R.S.O. 1980,
c. 308

(3) An order made under subsection (1) shall come into effect on the 1st day of December in the year in which regular elections under the *Municipal Elections Act* occur but the regular elections held in that year shall be conducted as if the order was in effect.

Inquiry by
Minister

(4) Where the Minister inquires into the structure, organization and methods of operation of one or more area municipalities or the Metropolitan Corporation, the Minister may give notice to the Municipal Board of such inquiry and that any application and any petition made under subsection (1) should be deferred until the inquiry has been completed and thereupon all proceedings in any such application or petition

are stayed until the Minister gives notice to the Municipal Board that they may be continued.

13. Subsection 245 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 17, is amended by inserting after "78b" in the second line "96 (1)".

14. Section 5a of the said Act, as enacted by section 3 of this Act, is repealed on the 1st day of December, 1988 but any order of the Lieutenant Governor in Council under section 5a remains valid until altered by an order of the Municipal Board under section 5b. Transitional
and repeal

15.—(1) This Act, except section 2, sections 4 to 11 and section 13, comes into force on the day it receives Royal Assent. Commence-
ment

(2) Section 2, sections 4 to 11 and section 13 come into force on the 1st day of December, 1988. Idem

(3) Notwithstanding subsection (2), the regular elections to be held in 1988 under the *Municipal Elections Act* in the area municipalities shall be conducted as if section 2, sections 4 to 11 and section 13 were in force. Idem
R.S.O. 1980,
c. 308

16. The short title of this Act is the *Municipality of Metropolitan Toronto Amendment Act, 1988*. Short title

Bill 30

An Act to amend the Pension Benefits Act, 1987

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The new section prevents an employer from taking money out of a pension plan. Sections 79 and 80 of the Act currently provide that surplus money can be paid out of a pension plan to an employer with the consent of the Pension Commission of Ontario.

Bill 30**1987****An Act to amend the Pension Benefits Act, 1987**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Sections 79 and 80 of the *Pension Benefits Act, 1987*, being chapter 35, are repealed and the following substituted therefor:

79. No money may be paid out of a pension fund to the employer.

Payment out
of pension
fund to
employer

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Pension Benefits Amendment Act, 1987*.

Short title

Bill 31

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 24th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to establish a Public Audit Board to inquire into the causes of an intended termination of employment of fifty or more employees and the effect of that termination on both individual employees and the community.

Where the Board determines that those effects are of major significance it will conduct an inquiry to determine whether the intended termination of employment is or is not justified by the economic circumstances. Where it is justified, the Board will indicate what action is required to mitigate the harmful effects of the intended termination of employment on the individual employees and the community. Where the intended termination of employment is not justified, the Board will indicate what action is required to prevent the intended termination of employment from taking place.

The Board will report to the Minister who may then make orders as he or she deems appropriate.

Bill 31

1987

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsections 40 (2a) to (2g) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1987, chapter 30, section 4, are repealed and the following substituted therefor:

(2a) There is hereby established a Public Audit Board consisting of a chairperson, one or more vice-chairpersons and an equal number of representatives of employers and employees, all of whom shall be appointed by the Lieutenant Governor in Council.

Public Audit Board

(2b) Where an employer is required to give notice by subsection (2), the Public Audit Board shall inquire into the causes of the intended termination of employment and its effect on individual employees and the community, and shall determine whether the effects of the intended termination of employment are of major significance.

Determination of Board

(2c) In making a determination under subsection (2b), the Public Audit Board shall have regard to the number of persons affected by the intended termination of employment, the economic importance of the employer's establishment to the community and region in which it is located, and such other factors as the Board considers to be appropriate.

Criteria for determination

(2d) Where the Public Audit Board determines that the effects of an intended termination of employment are of major significance, the Board shall forthwith conduct an inquiry into the economic circumstances and the expected social and economic effects of the intended termination of employment, and for the purpose of the inquiry, the Board has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

Where effects of termination major

Determina-
tion by
the Board
whether
termination
justified

(2e) The Public Audit Board shall determine whether the intended termination of employment is or is not justified by the economic circumstances and,

- (a) if it is justified, what action is required to mitigate the harmful effects of the intended termination of employment on the individual employees and the community; or
- (b) if it is not justified, what action is required to prevent the intended termination of employment from taking place.

Report of
Board

(2f) Where the Public Audit Board completes an inquiry into the intended termination of employment, it shall submit its report to the Minister at least sixty days before the termination date set out in the notice of termination and the report shall set out,

- (a) the findings regarding the economic circumstances of the intended termination of employment;
- (b) the findings regarding the social and economic effects of the intended termination of employment on individual employees and the community;
- (c) an opinion by the Board as to whether the intended termination of employment is justified; and
- (d) recommendations for actions considered necessary under subsection (2e).

Order of
Minister

(2g) The Minister shall make the report of the Public Audit Board available to any interested member of the public and, after considering the report of the Board, may make such orders as the Minister considers reasonable to mitigate the harmful effects of the intended termination of employment on the individual employees and the community including an order that the employer,

- (a) make additional contributions to the pension plans of the employees;
- (b) continue payment of the wages and benefits being received by the employees for a specified period of time;
- (c) defer the sale, removal or transportation of equipment, machinery, parts and inventory owned by the employer;

- (d) pay reasonable relocation costs to displaced employees;
- (e) participate in providing a skill training or retraining program for the employees;
- (f) make payments to any community fund;
- (g) make the employer's establishment available for sale; or
- (h) offer security of employment to employees affected by the intended termination of employment.

(2h) The Minister, with the approval of the Lieutenant Governor in Council, may acquire or expropriate on behalf of the Crown, or may authorize an agency of the government of Ontario to acquire or expropriate any land of the employer for the purpose of continuing the operation of the employer's establishment for the benefit of the employees and the community.

Power to
acquire or
expropriate
land of
employer

2. Clauses 65 (1) (tc) to (tf) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 30, section 7, are repealed and the following substituted therefor:

- (tc) establishing criteria to be considered by the Public Audit Board in making a determination, including without limiting the generality of the foregoing, a determination under subsection 40 (2b);
- (td) respecting an inquiry, audit or investigation carried out by the Public Audit Board;
- (te) specifying the amount that the employer is required to pay to effect an order of the Minister under subsection 40 (2h);
- (tf) prescribing forms and providing for their use;
- (tg) defining any word of expression used in this Act that is not defined in this Act; and
- (th) prescribing anything that by this Act is to be or may be prescribed.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Employment Standards Amendment Act, 1987*.

Bill 32

An Act to provide for the Employment of Disabled Persons

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to provide employment opportunities for disabled persons. The Bill requires that employers hire disabled persons to constitute at least 3 per cent of the employer's work force. The Bill permits the Minister to vary this percentage requirement in cases where the Minister considers another quota to be more suitable. In addition, the Minister may exempt an employer or class of employers from the operation of the statute. The Bill establishes a register of employable disabled persons to be maintained by the Ministry for the purpose of facilitating efforts by employers to meet the quota established by this Bill.

Bill 32

1987

**An Act to provide for the
Employment of Disabled Persons**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“disabled person” means any person suffering from a serious and prolonged physical disability;

“Minister” means the Minister of Labour;

“Ministry” means the Ministry of Labour;

“register” means the register of disabled persons established under section 4.

2.—(1) Every employer shall ensure that at any point in time the number of disabled persons who are employees of the employer is at least 3 per cent of the total number of employees of the employer.

Employment
of disabled
persons

(2) Despite subsection (1), the Minister may by order establish a quota for an employer or class of employers that is greater or less than the quota established under subsection (1) where the Minister is of the opinion that the quota established under subsection (1) is not suitable to that employer or class of employers.

Minister
may set
quota

3.—(1) No employer shall hire any person other than a disabled person if the number of disabled persons employed by the employer is less than the employer’s quota established under section 2.

Prohibition

(2) Subsection (1) does not apply to an employer who hires a person,

Exception

- (a) as a result of an agreement to reinstate the person entered into before the day on which this Act comes into force;
- (b) in accordance with an order or permit issued by the Minister under section 5.

Register

4.—(1) The Ministry shall establish and maintain a register of disabled persons for the purpose of facilitating the hiring by employers of disabled persons and the register shall record the name, address, qualifications, skills and the nature of the disability of each person registered therein.

Disabled person entitled to be registered

(2) Upon application, a person is entitled to be registered by the Ministry as a disabled person for the purposes of this Act if,

- (a) the person suffers from a physical disability that harms the person's prospects in obtaining employment; and
- (b) the person is capable of performing work in one or more work situations without causing danger to other employees.

Exemption order

5. Upon application, the Minister may by order,

- (a) exempt an employer or class of employers from the operation of this Act;
- (b) permit an employer to hire one or more persons who are not disabled persons for purposes set forth in the order.

Offence

6.—(1) Every employer who contravenes this Act is guilty of an offence and on summary conviction is liable,

- (a) if an individual, to a fine of not more than \$1,000; or
- (b) if a corporation, to a fine of not more than \$10,000.

Opportunity to comply

(2) No prosecution against an employer shall be instituted under this Act unless the employer is notified of the intent to bring a prosecution and afforded a reasonable opportunity to show or achieve compliance with this Act.

Regulations

7. The Lieutenant Governor in Council may make regulations,

- (a) prescribing additional types of information to be recorded in respect of each disabled person registered in the register;
- (b) governing the types of information to be supplied to the Ministry by each disabled person registered in the register;
- (c) governing records to be kept and reports to be provided by each employer concerning the disabled persons employed by the employer.

8. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

9. The short title of this Act is the *Disabled Persons Employment Act, 1987*. Short title

Bill 33

An Act to amend the Education Act

Mr. Mackenzie

1st Reading November 24th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to allow boards under the *Education Act* to provide certain medical and insurance benefits to their retired employees, their spouses and children. The Act as now worded allows boards to provide these benefits only to current employees and their families.

The Bill amends the Act in a manner consistent with the recent amendment to the *Municipal Act* made by the *Municipal Statute Law Amendment Act, 1987*.

Bill 33

1987

An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclauses 155 (1) (a) (i), (ii) and (iii) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

- (i) group life insurance for its employees and retired employees, or any class of them,
- (ii) group accident insurance or group sickness insurance for its employees and retired employees, or any class of them, and their spouses and children,
- (iii) hospital, medical, surgical, nursing or dental services, or payment therefor, for employees and retired employees, or any class of them, and their spouses and children; and

.

(2) Subsection 155 (2) of the said Act is amended by inserting after “employees” in the second line “and to retired employees”.

(3) Subsection 155 (3) of the said Act is repealed.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Education Amendment Act, 1987*. Short title

Bill 34

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 24th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to require an employer to provide a leave of absence to any employee who has been elected to provincial or municipal office so that the employee may be able to carry out the duties of an elected official.

The provisions of the Bill can be enforced by orders of an employment standards officer which are reviewable under section 50 of the Act. An employer who contravenes the provisions of the Bill is subject to the penalties set out in section 57 of the Act.

Bill 34

1987

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART XI-B

ELECTED OFFICIAL LEAVE

39e. No employer shall terminate the employment of or lay off an employee who is entitled to a leave of absence under this Part by reason of that employee being an elected official. Elected official leave

39f.—(1) An employee who has been elected to the Legislative Assembly or to a municipal public office and who has been employed by the employer for a period of three months preceding the date of the election shall be entitled upon application therefor to a leave of absence for the purpose of carrying out his or her duties as an elected official. When leave to be taken

(2) A leave of absence under this Part may be for a continuous period consisting of the whole or a part of the term of office to which the person was elected or for such intermittent periods of time during the day or week as the employee may feel is necessary to fulfil his or her duties as an elected official. Duration of leave

(3) Where a leave of absence is for a continuous period, the employee shall give the employer two weeks notice in writing of the day upon which the employee intends to commence the leave and shall set out in this notice the estimated duration of the leave. Notice

(4) Where a leave of absence is for intermittent periods, the employee shall give to the employer notice in writing prior Idem

to commencing the leave of regular periods of time during the day or week that the employee intends to be on leave, but the employee is entitled to a leave of absence at other times where such leave is necessary for the employee to fulfil his or her duties as an elected official.

Preservation
of seniority

39g.—(1) An employee who intends to resume full-time employment upon ceasing to be an elected official shall so advise the employer, and, upon returning to work, the employer shall reinstate or continue the employee in his or her position or provide alternative work of a comparable nature at not less than the wages of the employee at the time the leave of absence began and without loss of seniority or benefits accrued to the expiration of the term of office other than seniority or benefits accrued during the times that the employee was on leave.

Idem

(2) Where the employer has suspended or discontinued operations during the leave of absence of the employee and has not resumed operations upon the expiry thereof, the employer shall, upon resumption of operations, reinstate the employee to his or her employment or to alternate work in accordance with an established seniority system or practice of the employer in existence at the time the leave of absence began with no loss of seniority or benefits accrued to the commencement of the leave of absence, and, in the absence of such a system or practice, shall reinstate the employee in accordance with subsection (1).

Employment
standards
officer
may make
order

39h. Where an employer fails to comply with the provisions of this Part, an employment standards officer may order what action, if any, the employer shall take or what he or she shall refrain from doing in order to constitute compliance with this Part and may order what compensation shall be paid by the employer to the Director, in trust, for the employee.

2. Subsection 50 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 3, is repealed and the following substituted therefor:

Review of
order

(1) An employer who considers himself aggrieved by an order made under section 39, 39c, 39h or 47, upon paying the wages ordered to be paid and the penalty thereon, if any, may, within a period of fifteen days after the date of delivery or service of the order, or such longer period as the Director may for special reasons allow and provided that the wages have not been paid out under subsection 53 (2), apply for a review of the order by way of a hearing.

3. Subsection 53 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 4, is repealed and the following substituted therefor:

(2) Where compensation or wages have been paid by an employer under an order issued under section 39, 39c, 39h or clause 47 (1) (c), and no application for review has been made to the Director under section 50 within a period of fifteen days from the date of delivery of the order or such longer period as the Director has allowed, the Director shall pay to the employee or employees the compensation or wages obtained on his or her or their behalf. Idem

4. Subsection 57 (1) of the said Act is amended by adding thereto the following clause:

(ea) has sought to exercise any of his or her rights under Part XI-B of this Act.

5. This Act comes into force on the day it receives Royal Assent. Commence-
ment

6. The short title of this Act is the *Employment Standards Amendment Act, 1987*. Short title

Bill 35

An Act to amend the Public Vehicles Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill would prohibit passengers from occupying the part of a bus or streetcar to the immediate right of the driver's seat after the driver has asked them to clear that area.

Bill 35

1987

An Act to amend the Public Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 23 of the *Public Vehicles Act*, being chapter 425 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) No person other than the driver or operator shall occupy any portion of a bus or streetcar, both as defined in the *Highway Traffic Act*, forward of the back of the driver's or operator's seat after the driver or operator has requested passengers to clear that portion of the bus or streetcar.

No
obstruction
of driver's
view
R.S.O. 1980,
c. 198

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Public Vehicles Amendment Act, 1987*.

Short title

Bill 36

An Act to provide Political Rights for Public Servants

Mr. Mackenzie

1st Reading November 24th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill is designed to give public servants the same political rights that all other citizens enjoy in Ontario. It covers civil servants, Crown employees, employees of community colleges, and people working for agencies such as Ontario Hydro, the Workers' Compensation Board and the Ontario Northland Transportation Commission, but excludes Deputy Ministers, officers of similar status in Crown agencies and other senior policy-making officials.

The deleted sections of the *Public Service Act* make it illegal for a public servant to canvass on behalf of a candidate in an election, to solicit funds for a political party or a candidate at any time, or to speak or to write a letter to the editor on "any matter that forms part of the platform of a provincial or federal political party". A public servant may only become a candidate for election after the writs are issued and is effectively barred from being a candidate if a nomination is held before that date. The candidate must take leave of absence without pay for a period of four to five weeks.

The Bill provides that public servants will be able to write, speak, contribute, solicit funds, work, join, hold office, and vote on behalf of, in, for, or to a political party or candidate in a federal or provincial election and protects public servants from punitive action by their superiors or from being forced to carry out partisan duties as a condition of their employment.

The deleted section of the *Crown Employees Collective Bargaining Act* contains the sections which are re-enacted in the Bill and also prohibits an employee organization from receiving money from public employees who are its members for activities carried on by, or on behalf of a political party, from paying out money to, or on behalf of, the political party, or from otherwise supporting a political party. The penalty for these activities is loss of bargaining rights. The Bill will give an employee organization the rights enjoyed by other trade unions, prevents it from compelling an employee to engage in political activity and provides for a wider range of penalties.

Bill 36

1987

An Act to provide Political Rights for Public Servants

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“agency” means any board, agency or commission of the Crown in right of Ontario;

“public servant” means a person appointed in the service of the Crown by the Lieutenant Governor in Council, by the Civil Service Commission or by a Minister, or a person employed in the service of the Crown or any agency of the Crown, but does not include any Deputy Minister or senior employee of the Crown or an agency with management or policy responsibilities;

“Tribunal” means the Ontario Public Service Labour Relations Tribunal as defined in section 1 of the *Crown Employees Collective Bargaining Act*.

R.S.O. 1980,
c. 108

2.—(1) Every public servant shall be entitled to exercise the following political rights,

Political
rights

- (a) the right to vote;
- (b) the right to actively support a political party or a candidate for provincial or federal office;
- (c) the right to contribute to a political party at any time;
- (d) the right to solicit funds for a candidate or for a political party;
- (e) the right to be a member of a political party and to hold office in such party; and

- (f) the right to express views on matters that form part of the platform of a provincial or federal political party.

Idem

(2) The rights provided in subsection (1) are subject to the condition that,

- (a) the employee does not engage in political activities during working hours;
- (b) the employee does not associate his or her position in the service of the Crown with any political activity;
- (c) the employee does not speak in public or express views in writing for distribution to the public on any matter with which he or she is directly engaged in employment with the Crown;
- (d) the employee respects the oath of office and secrecy, as provided under section 10 of the *Public Service Act*.

R.S.O. 1980,
c. 418

Partisan
work by
public
servants

3. No public servant shall be required by his or her employer to engage in work or activity of a partisan nature for a candidate or a political party either during or outside working hours and, notwithstanding the provisions of any other Act, refusal to perform such activities shall be a justifiable defence against any dismissal, transfer or other disciplinary action.

Leave of
absence

4. A public servant who proposes to become a candidate in a provincial or federal election shall inform his or her Minister or the chief officer of his or her agency, and,

- (a) may seek leave of absence without pay at any time the public servant is duly nominated by his or her party as its candidate; and
- (b) shall take leave of absence commencing on the day on which the writ for the election is issued or on the day on which he or she is nominated by his or her party, whichever date comes later; and
- (c) shall be granted leave with pay commencing on the day provided by statute for the nomination of candidates and ending on polling day,

and every such application shall be granted.

5. Where a public servant who is a candidate in a provincial or federal election is elected, the public servant shall forthwith resign his or her position as a public servant. Resignation

6. Where a public servant who has resigned under section 5, Reappointment

- (a) ceases to be an elected political representative within five years of the resignation; and
- (b) applies for reappointment to his or her former position or to another position in the service of the Crown for which the public servant is qualified, within three months of ceasing to be an elected political representative,

he or she shall be reappointed to the position upon its next becoming vacant.

7. Where a public servant has been granted leave of absence under section 4 and was not elected, or resigned a position under section 5 and was reappointed under section 6, the period of the leave of absence or resignation shall be computed in determining the length of his or her service for any purpose, and the service shall be deemed to be continuous for all purposes. Period of leave of absence

8. Every public servant who knowingly fails to comply with the requirements of this Act may be disciplined under the Act or regulation governing his or her employer. Disciplinary action

9.—(1) In this section, “employee organization” means an organization of employees formed for the purpose of regulating relations between the Crown in right of Ontario and public servants under this Act. Interpretation

(2) No employee organization shall discriminate against any employee because of age, sex, race, national origin, colour or religion. Prohibitions

(3) Where a public servant or the Crown in right of Ontario considers that an employee organization is in violation of subsection (2), a complaint may be lodged with the Tribunal, which shall conduct a public hearing to consider the matter and which may, Tribunal

- (a) dismiss the complaint; or
- (b) withdraw bargaining rights from the employee organization involved; or

- (c) levy a fine; or
- (d) take such other disciplinary action as it considers appropriate.

10. Sections 12, 13, 14, 15 and 16 of the *Public Service Act*, being chapter 418 of the Revised Statutes of Ontario, 1980, are repealed.

11. Clause 1 (1) (g) of the *Crown Employees Collective Bargaining Act*, being chapter 108 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-
ment

12. This Act comes into force on the day it receives Royal Assent.

Short title

13. The short title of this Act is the *Public Servants' Political Rights Act, 1987*.

Bill 37

An Act to amend the Labour Relations Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to repeal a provision of the Act that prohibits the inclusion of security guards in a bargaining unit. The repeal of this provision would permit security guards to join or establish an association or union for collective bargaining purposes.

Bill 37**1987****An Act to amend the Labour Relations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 12 of the *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is repealed.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Labour Relations Amendment Act, 1987*. Short title

Bill 38

An Act to amend the Labour Relations Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The section being added to the Act deals with various situations where there is an attempt to replace union employees or prospective union employees with non-union employees or to replace an employer who is a party to a contract or a prospective contract.

Bill 38

1987

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

CONTRACTING OUT

63a.—(1) This section does not apply to,

Application

- (a) employees working for an employer as defined in clause 117 (c); or
- (b) employees engaged in making, preparing (other than the preparation of food for sale), altering, repairing, ornamenting, printing, finishing, packing, packaging, inspecting, testing or assembling for purposes of sale, any article, commodity or raw material.

(2) Where a contracting party contracts with an employer, for the employer to provide, to, at, or out of an establishment, work or services essentially similar to that or those previously performed by employees covered by a collective agreement, the employer is bound by the collective agreement as if the employer were a party thereto.

Collective
agreement
binding

(3) Where a contracting party contracts with an employer, for the employer to provide, to, at, or out of an establishment essentially similar to that or those previously performed by employees covered by an application for certification or for termination of bargaining rights, the employer for the purposes of any such application, shall be deemed to be the employer named in the application.

Certification
or
termination
of bargaining
rights
application

(4) Where a contracting party contracts with an employer, for the employer to provide, to, at, or out of an establish-

Union's right
to give notice
continued

ment, work or services essentially similar to that or those previously performed by employees in a bargaining unit for which a trade union has been certified or has given or is entitled to give notice under section 14 or 53, the trade union continues to be the bargaining agent for the employees performing the work or services and is entitled to give to the employer a written notice of its desire to bargain with a view to making a collective agreement or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement and the notice has the same effect as a notice under section 14 or 53.

Where
employer
contract
replaced

(5) Where a contracting party terminates a contract with an employer under which the employer provides, to, at, or out of an establishment, work or services essentially similar to that or those performed, before the termination of the contract, by employees covered by a collective agreement and the work or services are subsequently performed under the direction of another employer, the subsequent employer is bound by the collective agreement as if that employer were a party thereto.

Idem

(6) Where a contracting party terminates a contract with an employer under which the employer provides, to, at, or out of an establishment, work or services essentially similar to that or those performed, before the termination of the contract, by employees covered by an application for certification or for termination of bargaining rights and the work or services are subsequently performed under the direction of another employer, the subsequent employer, for the purposes of any such application, shall be deemed to be the employer named in the application.

Idem

(7) Where a contracting party terminates a contract with an employer under which the employer provides, to, at, or out of an establishment, work or services essentially similar to that or those performed, before the termination of the contract, by employees in a bargaining unit for which a trade union has been certified or has given or is entitled to give notice under section 14 or 53, and the work or services are subsequently performed under the direction of another employer, the union continues to be the bargaining agent for the employees performing the work or services and the trade union is entitled to give to the employer written notice of its desire to bargain with the view to making a collective agreement or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement and the notice has the same effect as a notice under section 14 or 53.

(8) The Board shall, upon application by a trade union, treat a contracting party as one employer for the purposes of this Act and grant such relief by way of declaration or otherwise as it considers appropriate.

Contracting
party treated
as one
employer

(9) In this section, “contracting party” means a corporation, individual, firm, syndicate, association or any combination thereof.

Interpretation

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Labour Relations Amendment Act, 1987*.

Short title

Bill 39

An Act to amend the Labour Relations Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to clarify that the *Labour Relations Act* applies to employees who are engaged in agricultural employment in an industrial or factory setting. Clause 2 (b) of the Act currently states that the Act does not apply "to a person employed in agriculture". This provision has been interpreted broadly by the Ontario Labour Relations Board to exclude from the Act persons whose employment relates to agriculture but who are employed in organizations that resemble industrial plants.

Bill 39**1987****An Act to amend the Labour Relations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 2 (b) of the *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) to a person employed in agriculture on a farm by a person who is a farmer;
- (ba) to a person employed in hunting or trapping.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Labour Relations Amendment Act, 1987*. Short title

Bill 40

An Act to amend the Labour Relations Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to prevent the hiring of strikebreakers and to control access to a work premises that is affected by a strike or lock-out. The Bill prohibits an employer from hiring or using the services of a person to do the work of an employee who is on strike or locked out unless that person is specifically authorized to do so. Similarly, when a picket line is established at a place of access to a work premises, access is limited to persons specifically authorized by the Bill. The Bill repeals a provision of the Act dealing with professional strikebreakers and strike-related misconduct.

Bill 40

1987

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

67a.—(1) In this section,

Definitions

“employer” includes an employers’ organization and a person acting on behalf of an employer or an employers’ organization;

“legal picket line” means a moving formation of two or more persons who are members of a certified bargaining unit and who by means of signs or posters give notice that the certified bargaining unit is on strike or locked out.

(2) No employer shall employ or use the services of any person to perform the work of an employee who is exercising a legal right to strike or who is locked out unless,

Unlawful
employment

- (a) the person ordinarily exercises managerial or supervisory functions and was a full-time employee of the employer on the day the strike or lock-out commenced; or
- (b) the person is authorized to perform the work by agreement between the employer and representatives of the certified bargaining unit that is on strike or locked out.

(3) Where a legal picket line is formed in support of a lawful strike or lock-out at a place of access to a work premises, no person shall enter the premises unless,

Unlawful
entry

- (a) the person ordinarily exercises managerial and supervisory functions;

- (b) the person is a member of a certified bargaining unit that is not on strike or locked out and is not engaged in performing the work of an employee who is on strike or locked out;
- (c) the person is a non-union employee who was a full-time employee of the employer on the day the strike or lock-out was commenced and is not engaged in performing the work of an employee who is on strike or locked out;
- (d) the person requires access to the work premises for the purpose of providing emergency services;
- (e) the person is authorized to enter the work premises by agreement between the employer and representatives of the bargaining unit that is on strike or locked out.

Duty of
police
officer

(4) Where a picket line is formed in support of a lawful strike or lock-out at a place of access to a work premises, it is the duty of every police officer stationed at that place to ensure that no person other than a person authorized under subsection (3) enters the work premises.

Trespass

(5) A person who enters the work premises contrary to subsection (3) or who, upon gaining entry, performs work contrary to subsection (2), commits a trespass and is liable to proceedings under the *Trespass to Property Act*.

R.S.O. 1980,
c. 511

2. Section 71a of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 42, section 1, is repealed.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Labour Relations Amendment Act, 1987*.

Bill 41

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill adds three holidays to the definition of “public holiday”. They are Easter Monday, the first Monday in August and Boxing Day.

Bill 41**1987****An Act to amend the Employment Standards Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (1) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (1) “public holiday” means New Year’s Day, Good Friday, Easter Monday, Victoria Day, Dominion Day, the first Monday in August, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Employment Standards Amendment Act, 1987*. Short title

Bill 42

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The proposed new section 29 increases the vacation period to which an employee is entitled under the Act. Currently, the Act provides a two week vacation period for each employee that does not vary with the amount of employment service.

SECTION 2. The proposed amendment is complementary to section 1 of the Bill. Sub-section 30 (1) of the Act as it currently reads is set out below with the amended portions underlined:

(1) The employer shall determine the period when an employee may take the vacation to which he is entitled under section 29, which may be a two week period or two periods of one week each, but in any case the employee shall be given his vacation not later than ten months after the end of the twelve month period for which the vacation was given.

SECTION 3. The proposed amendment is complementary to section 1 of the Bill. Section 31 of the Act as it currently reads is set out below with the amended portions underlined:

31. Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay pursuant to section 29, the employer shall pay to the employee an amount equal to 4 per cent of the wages of the employee in any twelve month period or periods or part thereof and in calculating wages no account shall be taken of any vacation pay previously paid.

Bill 42

1987

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 29 of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

29.—(1) Every employer shall give to each employee a vacation with pay of at least, Vacations

- (a) two weeks in each year upon the completion of twelve months of employment;
- (b) three weeks in each year upon the completion of sixty months of employment;
- (c) four weeks in each year upon the completion of 120 months of employment; and
- (d) five weeks in each year upon the completion of 240 months of employment.

(2) The amount of pay for a vacation shall be not less than Idem an amount equal to 2 per cent of the annual wages of the employee for each week of vacation to which the employee is entitled under subsection (1) and in calculating wages no account shall be taken of any vacation pay previously paid.

2. Subsection 30 (1) of the said Act is repealed and the following substituted therefor:

(1) The employer shall determine the period when an employee may take the vacation to which he or she is entitled under section 29, which may be a consecutive period or periods of one week each, but in any case the employee shall be given his or her vacation not later than six months after the end of the twelve month period for which the vacation was given. When
vacation
to be taken

3. Section 31 of the said Act is repealed and the following substituted therefor:

Vacation
pay

31. Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay under section 29, the employer shall pay to the employee an amount equal to 2 per cent of the annual wages of the employee for each week of vacation to which the employee is entitled under section 29, and in calculating wages no account shall be taken of any vacation pay previously paid.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Employment Standards Amendment Act, 1987*.

Bill 43

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to protect employees where persons contract out work or services so the employees can maintain the seniority, wages, benefits and other rights they had before the work or services were contracted out.

Bill 43**1987****An Act to amend the Employment Standards Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (1) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 55, section 1, is further amended by inserting after “Parts” in the first line “II-A”.

2. The said Act is amended by adding thereto the following Part:

PART II-A**CONTRACTING OUT**

15a. In this Part,

Definitions

“contract” means a contract entered into between a contractor and an employer under which the employer is to provide for the contractor, directly or indirectly, work or services to be performed by employees of the employer or by employees of some other employer;

“contractor” means a person who contracts with an employer for the provision, directly or indirectly, of work or services by employees of the employer or by employees of some other employer;

“work or services” means work or services performed in or at an establishment, but does not include,

- (a) the construction, alternation, maintenance or demolition of buildings, structures, roads, sewers, pipelines, mains or tunnels or other works where the employee works at the site thereof, and

- (b) except in the food industry, the making, preparing, altering, ornamenting, finishing, packing, packaging, inspecting, testing or assembling the parts of an article, commodity or raw material for sale.

Employer to
hire former
employees

15b.—(1) Where an employer enters into a contract with a contractor to provide work or services for the contractor and the work or services being performed in whole or in part by employees of,

- (a) the contractor; or
- (b) a person who has a direct or indirect contractual relationship with the contractor,

immediately before the contract is entered into, the employer shall offer to hire those employees to perform the work or services.

Conditions
of
employment

(2) Where an employee accepts employment offered under subsection (1), the employer shall recognize the service and seniority that the employee has earned performing the work or services, regardless of what employer the employee was working for and the employer, on the basis of that seniority, shall,

- (a) offer employment for the performance of the work or service to be provided under the contract;
- (b) effect promotions and transfers for the work or services; and
- (c) determine the employee's rights to vacation, sick leave and maternity leave.

Idem

(3) Where an employee accepts employment offered under subsection (1), the employer shall pay to the employee wages and provide to the employee benefits, rights and privileges at least equal to those that the employee was receiving for performing the work or services immediately before the employer entered into the contract with the contractor.

Deemed
provisions of
contract

15c. A contract shall be deemed to contain undertaking by the employer to comply with section 15b.

Application
of Part

15d.—(1) Sections 15a, 15b and 15c apply to the assignee or transferee of the rights of the employer of a part or all of the contract as if the assignee or transferee were the employer.

(2) Where a contract between an employer and a contractor is terminated and the contractor undertakes to perform the contracted work or services, sections 15a and 15b apply to the contractor as if the contractor were the employer. Idem

(3) Where a contract between an employer and a contractor is terminated and the contractor contracts with a new employer to perform the contracted work or services, sections 15a, 15b and 15c apply to the new employer as if the new employer were the first named employer. Idem

3. This Act comes into force on the day it receives Royal Assent. Commence-
ment

4. The short title of this Act is the *Employment Standards Amendment Act, 1987*. Short title

Bill 44

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to reduce the standard work week from forty-eight hours to forty hours and to require employers to pay overtime rates for work done in excess of forty hours per week rather than forty-four hours.

The sections of the Act as amended by this Bill are set out below with the amended portions shown underlined.

SECTION 1. Subsection 11 (2), as amended, would read as follows:

(2) Subclause (1) (a) (iii) does not apply in respect of the salaried employees of an employer who perform work of a clerical or administrative nature where the employer makes and keeps a record showing the number of hours worked by such employees in excess of eight hours a day and forty hours a week.

SECTION 2. Section 17, as amended, would read as follows:

17. Except as otherwise provided in this Part, and subject to any schedule in force under the Industrial Standards Act, the hours of work of an employee shall not exceed eight in the day and forty in the week.

SECTION 3. Section 18, as amended, would read as follows:

18. An employer may, with the approval of the Director, and upon such terms and conditions as the Director prescribes, adopt a regular day of work in excess of eight hours but not in excess of twelve hours, provided that the total hours of work of each employee shall not exceed forty hours in a week.

SECTION 4. Subsection 20 (3), as amended, would read as follows:

(3) The issuance of a permit under this section does not require an employee to work any hours in excess of those prescribed by section 17 or approved under section 18 without the consent or agreement of the employee or his agent to hours in excess of eight in the day or forty in the week.

SECTION 5. Subsection 25 (1), as amended, would read as follows:

(1) Except as otherwise provided in the regulations, where an employee works for an employer in excess of forty hours in any week, he shall be paid for each hour worked in excess of forty hours overtime pay at an amount not less than one and one-half times the regular rate of the employee.

Bill 44**1987****An Act to amend the Employment Standards Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 11 (2) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by striking out “forty-four” in the fifth line and inserting in lieu thereof “forty”.

2. Section 17 of the said Act is amended by striking out “forty-eight” in the fourth line and inserting in lieu thereof “forty”.

3. Section 18 of the said Act is amended by striking out “forty-eight” in the fifth line and inserting in lieu thereof “forty”.

4. Subsection 20 (3) of the said Act is amended by striking out “forty-eight” in the fifth line and inserting in lieu thereof “forty”.

5. Subsection 25 (1) of the said Act is amended by striking out “forty-four” in the third line and in the fourth line and inserting in lieu thereof in each instance “forty”.

6. This Act comes into force on the day it receives Royal Assent. Commence-
ment

7. The short title of this Act is the *Employment Standards Amendment Act, 1987*. Short title

Bill 45

An Act to amend the Children's Law Reform Act

Mr. Cousens

1st Reading November 24th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill provides a new mechanism for the resolution of disputes concerning access to children.

Where an access order already exists, the court may appoint a mediator. On receiving the mediator's report, the court may vary the order in accordance with the terms agreed to by the parties or the terms recommended by the mediator. The court may draw an adverse inference from a party's unwillingness to co-operate in the mediation with respect to his or her ability to act in the best interests of the child.

The court may also order that access to a child be arranged through a supervised access centre established by the Attorney General.

The Bill also adds the importance of maintaining emotional ties between the child and his or her grandparents to the factors to be considered by a court in determining the best interests of the child.

Bill 45**1987****An Act to amend the Children's Law Reform Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 21 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

21. A parent or grandparent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of or access to the child. Application
for order

2. Subsection 24 (2) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following clause:

(aa) the importance of maintaining emotional ties between the child and his or her grandparents.

3. Section 35 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsections:

(3) The Attorney General may establish one or more supervised access centres. Supervised
access centres

(4) The purpose of a supervised access centre shall be, Idem

(a) to provide a neutral place for visits with a child, with or without supervision; and

(b) to provide a neutral place where a child may be picked up and dropped off by a person exercising a right of access.

4. The said Act is amended by adding thereto the following sections:

Application
for mediation
of
access
disputes

37a.—(1) Subject to subsection (2), where a court is satisfied upon application by a person in whose favour an order has been made for access to a child that there are reasonable and probable grounds for believing that a person in whose favour an order has been made for custody of the child is unlawfully withholding the child from the applicant, the court shall by order appoint a person to mediate the access dispute.

Exceptions

(2) The court shall not make an order under subsection (1) if it is satisfied that,

(a) any party lacks the ability to participate effectively in the mediation, whether or not the party is willing to participate; or

(b) the application is not made in good faith.

Purpose of
mediation

(3) The purpose of the mediation shall be to reduce acrimony that may exist between the parties and to obtain an agreement that will assure the child's close and continued relationship with each of the parties.

Agreement
by
parties

(4) The court shall, if possible, appoint a person agreed upon by the parties, but if the parties do not agree the court shall choose and appoint the person.

Qualifica-
tions of
mediator

(5) A person appointed under subsection (1) or (7) shall be skilled in the practice of family mediation.

Consent to
act

(6) The court shall not appoint a person under subsection (1) or (7) unless the person has consented to act as mediator and to file a report with the court within the period of time specified by the court.

Replacement
of mediator

(7) If the court is satisfied upon application made in good faith that,

(a) there are reasonable grounds for believing that, despite the willingness of the parties to co-operate in the mediation, the mediator is unlikely to obtain an agreement between them; or

(b) a party has a reasonable apprehension of bias on the part of the mediator,

the court may by order appoint another person to replace the person appointed under subsection (1).

Duties of
mediator

(8) It is the duty of a mediator,

- (a) to confer with the parties and endeavour to obtain an agreement in respect of the access dispute;
- (b) to terminate the mediation if, in the mediator's opinion, its continuation is likely to result in physical or emotional harm to a party;
- (c) to terminate the mediation if, in the mediator's opinion, it is unlikely that its continuation will lead to an agreement between the parties;
- (d) to advise the parties if, in the mediator's opinion, an agreement reached between them is unreasonable or not in the best interests of the child; and
- (e) to promote the best interests of the child.

(9) The mediator may confer with the child who is the subject of the access order, with other members of the child's family and with persons involved in the care and upbringing of the child.

Consultation
with child,
etc.

(10) If, in the mediator's opinion, a party is likely to suffer physical or emotional harm as a result of meeting with another party to the mediation, the mediator may conduct the mediation by meeting with the parties separately.

Consultation
without the
other party

(11) If a party does not co-operate in the mediation, the court may require the party to pay all or a part of the mediator's fees and expenses.

Fees and
expenses

37b.—(1) The mediator shall file a full report on the mediation, including anything that the mediator considers relevant to the access dispute and a statement showing the amount of time the mediator spent conferring with the parties, the child and any other person.

Mediator's
report

(2) The mediator shall include in the report,

Idem

- (a) a statement of the terms that the parties have agreed to with respect to the custody of or access to the child, signed by the parties; or
- (b) a statement that the parties did not reach agreement.

(3) If, in the opinion of the mediator, the parties failed to reach agreement as a result of the unwillingness of either of them to co-operate in the mediation, the mediator shall include a statement to that effect in the report.

Non-
co-operation

Recommendations

- (4) The mediator may recommend in the report,
- (a) that the terms of the order in respect of the custody of or access to the child be varied in accordance with the terms agreed to by the parties or the terms, if any, recommended by the mediator;
 - (b) that the child or any person with a right to custody of or access to the child obtain individual or family counselling;
 - (c) that any person with a right to custody of or access to the child participate in a parental education program;
 - (d) that access to the child be carried out under supervision or at a supervised access centre established under subsection 35 (3); or
 - (e) any other measure likely to resolve the access dispute.

Filing of report

- (5) The mediator shall file the report with the clerk or registrar of the court.

Copies of report

- (6) The clerk or registrar of the court shall give a copy of the report to each of the parties, to their counsel and to counsel, if any, representing the child.

Powers of court

37c.—(1) On motion, the court may,

- (a) by order vary an order in respect of custody or access in accordance with the terms agreed to by the parties or the terms recommended by the mediator;
- (b) by order require a party to implement any of the mediator's recommendations; and
- (c) make any other order the court considers necessary and proper in the circumstances.

Effect of party's non-co-operation

- (2) If a party was unwilling to co-operate in the mediation, the court may draw an adverse inference in respect of the party's ability and willingness to act in the best interests of the child.

5. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

6. The short title of this Act is the *Children's Law Reform Amendment Act, 1987*. Short title

Bill 46

An Act to amend the Ontario Unconditional Grants Act

The Hon. J. Eakins
Minister of Municipal Affairs

1st Reading November 25th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 1. The effect of this amendment is to make the grant per household payable to an area municipality to be prescribed only by regulation. At present, the amount payable is set out in the Act but can be varied by regulation.

SECTION 2. The amendments to section 8 of the Act alter the formula for the resource equalization grant for upper tier municipalities so that it is now based on equalized assessment per household for the whole upper tier municipality. Currently, it is based on the grants to the lower tier municipalities.

SECTION 3. The effect of the amendments to section 9 of the Act is that the equalized assessment of the lower tier municipality will no longer be increased by an amount that would have produced the resource equalization grant.

SECTION 4. This amendment is consequential to the changes made in section 8 of the Act.

Bill 46**1987**

**An Act to amend the
Ontario Unconditional Grants Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 2b of the *Ontario Unconditional Grants Act*, being chapter 359 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 23, section 3, is amended by striking out “\$47 per household, or such other” in the first and second lines and inserting in lieu thereof “such”.

2.—(1) Subsection 8 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 9, section 7 and amended by the Statutes of Ontario, 1984, chapter 23, section 7, is further amended by striking out “in respect of” in the second line and inserting in lieu thereof “to”.

(2) Subsection 8 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 9, section 7, is repealed and the following substituted therefor:

(2) In each year there shall be paid a resource equalization grant to each upper tier municipality whose equalized assessment per household in the preceding year as is determined in the prescribed manner is below such standard equalized assessment per household as may be prescribed, and the amount of the grant shall be based, in the manner and subject to such limits as may be prescribed, on the proportion that 60 per cent of such deficiency of equalized assessment per household bears to the prescribed standard equalized assessment per household as applied to the net levy of the upper tier municipality.

Payment of
grants

(3) Subsection 8 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 9, section 7, is repealed.

3.—(1) Subsection 9 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 52, section 1, is repealed.

(2) Subsection 9 (2) of the said Act is repealed.

4. Clause 14 (1) (h) of the said Act is repealed.

Commence-
ment

5. This Act shall be deemed to have come into force on the 1st day of January, 1987.

Short title

6. The short title of this Act is the *Ontario Unconditional Grants Amendment Act, 1987*.

Bill 46

(Chapter 6
Statutes of Ontario, 1988)

An Act to amend the Ontario Unconditional Grants Act

The Hon. J. Eakins
Minister of Municipal Affairs



<i>1st Reading</i>	November 25th, 1987
<i>2nd Reading</i>	December 9th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 46**1987**

**An Act to amend the
Ontario Unconditional Grants Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 2b of the *Ontario Unconditional Grants Act*, being chapter 359 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 23, section 3, is amended by striking out “\$47 per household, or such other” in the first and second lines and inserting in lieu thereof “such”.

2.—(1) Subsection 8 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 9, section 7 and amended by the Statutes of Ontario, 1984, chapter 23, section 7, is further amended by striking out “in respect of” in the second line and inserting in lieu thereof “to”.

(2) Subsection 8 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 9, section 7, is repealed and the following substituted therefor:

(2) In each year there shall be paid a resource equalization grant to each upper tier municipality whose equalized assessment per household in the preceding year as is determined in the prescribed manner is below such standard equalized assessment per household as may be prescribed, and the amount of the grant shall be based, in the manner and subject to such limits as may be prescribed, on the proportion that 60 per cent of such deficiency of equalized assessment per household bears to the prescribed standard equalized assessment per household as applied to the net levy of the upper tier municipality.

Payment of
grants

(3) Subsection 8 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 9, section 7, is repealed.

3.—(1) Subsection 9 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 52, section 1, is repealed.

(2) Subsection 9 (2) of the said Act is repealed.

4. Clause 14 (1) (h) of the said Act is repealed.

Commence-
ment

5. This Act shall be deemed to have come into force on the 1st day of January, 1987.

Short title

6. The short title of this Act is the *Ontario Unconditional Grants Amendment Act, 1988*.

Bill 47

An Act to amend the Highway Traffic Act

Mrs. Grier

1st Reading November 25th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to aid in the enforcement of the rules of the road as they apply to bicyclists. It adds the requirement that bicyclists provide identifying information to police officers who request it. The Act provides that if they do not provide the information, they can be arrested.

Bill 47

1987

An Act to amend the Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Paragraph 39 of subsection 1 (1) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 63, section 1, is further amended by inserting after “machine” in the second line “bicycle”.

2. Subsection 19 (2) of the said Act is repealed and the following substituted therefor:

(2) Every person who is unable or refuses to surrender his or her licence in accordance with subsection (1) and every driver of a vehicle propelled or driven by muscular power shall, when requested by a constable, give reasonable identification of himself or herself and, for the purposes of this subsection, the correct name and address of such person shall be deemed to be reasonable identification. Identification

3. This Act comes into force on the day it receives Royal Assent. Commence-
ment

4. The short title of this Act is the *Highway Traffic Amendment Act, 1987*. Short title

Bill 48

An Act to amend the Police Act

Mr. Eves

1st Reading November 25th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill would prohibit police forces from selling or trading lost, stolen, confiscated or seized fire-arms.

The Bill would require police forces to destroy all lost, stolen, confiscated or seized fire-arms when those fire-arms were no longer required for the conduct of a legal action.

Bill 48**1987****An Act to amend the Police Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 18 (1) of the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, is amended by inserting after “kind” in the second line “except confiscated, seized, stolen or abandoned fire-arms”.

(2) Section 18 of the said Act is amended by adding thereto the following subsection:

(1a) Confiscated, seized, stolen or abandoned fire-arms shall not be sold or traded but shall, when no longer required for the conduct of a legal action, be destroyed. Limitation

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Police Amendment Act*, Short title
1987.

Bill 49

An Act to relieve Persons from Liability in respect of voluntary Emergency Medical and First Aid Services

Mr. Haggerty

1st Reading November 26th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to relieve persons from liability in respect of voluntary emergency first aid assistance or medical services rendered at or near the scene of an accident or other sudden emergency.

Bill 49

1987

**An Act to relieve
Persons from Liability in respect of
voluntary Emergency Medical and First Aid Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“physician” means a medical practitioner licensed under Part III of the *Health Disciplines Act*;

R.S.O. 1980,
c. 196

“registered nurse” means a person who is the holder of a certificate as a registered nurse issued under Part IV of the *Health Disciplines Act*.

2. Where, in respect of a person who is ill, injured or unconscious as the result of an accident or other emergency,

Relief
from liability
for damages

- (a) a physician or registered nurse voluntarily and without expectation of compensation or reward renders emergency medical services or first aid assistance and the services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment; or
- (b) a person other than a person mentioned in clause (a) voluntarily renders emergency first aid assistance and the assistance is rendered at the immediate scene of the accident or emergency,

the physician, registered nurse or other person shall not be liable for damages for injuries to or the death of such person alleged to have been caused by an act or omission on his or her part in rendering the medical services or first aid assistance, unless it is established that the injuries or death were caused by the gross negligence of the physician, registered nurse or other person.

Act does
not apply
to normal
medical
services

3. Nothing in section 2 shall be construed to relieve a physician from liability for damages for injuries to or the death of any person caused by an act or omission on the part of the physician in respect of medical services rendered by him in the normal and ordinary course of his practice and not under the circumstances set forth in section 2.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Good Samaritan Act, 1987*.

71N

1ST SESSION, 34TH LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 50

An Act to provide for Community Mental Health Services

Mr. Reville



1st Reading December 1st, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill allows the Minister to establish and maintain systems of community mental health services which follow certain comprehensive principles and which may include certain comprehensive components.

Bill 50**1987**

**An Act to provide for
Community Mental Health Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Minister” means the Minister of Health;

“psychiatrist” means a physician who holds a specialist’s certificate in psychiatry issued by The Royal College of Physicians and Surgeons of Canada or equivalent qualification acceptable to the Minister;

“regulations” means the regulations made under this Act.

2. The Minister may establish and maintain a system of community mental health services in accordance with the following principles:

Community
health
services

1. The planning, arrangement and delivery of support to each person shall be determined by the particular needs of the person.
2. Each person who is to be provided with such services shall be encouraged to participate in planning the person’s treatment and service plan.
3. The system shall respond to the individual as a whole person, delivering the necessary type and degree of support without regard to age or degree of disability.
4. Each person shall be considered to be entitled to live and receive age-appropriate services in the least restrictive setting consistent with the person’s needs, potential and abilities.

5. The system shall give to each person the maximum opportunity to participate in the mainstream of community life.
6. The system shall monitor and flexibly adjust the supports and services it provides in order to remain appropriate and responsive to each person served by the system as the person's needs change.
7. The treatment and service plan for each person served by the system shall be reviewed at least annually.
8. The system shall have defined geographic areas and the existing and newly-developed resources and supports and services shall be co-ordinated in the manner that most effectively meets the needs of the persons served by the system in each such area.
9. The system shall be designed to encourage each person served by the system to acquire the skills necessary to live, work and function in the community.
10. The responsibility for planning, development, co-ordination and delivery of the services in each geographic area shall be delegated to a specific authority.
11. The system shall co-operate with advocacy bodies that are free from conflict of interest and are intended to assist persons served by the system to enforce their rights.

Components

3. The community mental health service may include the following components:

1. Community housing services, including a range of supportive housing, approved homes, homes for special care and services to residents in designated boarding homes.
2. Psychosocial services, including rehabilitation assessment, case management, social skills training, social therapeutic clubs, social network therapy, self-help groups, vocational and educational services including supportive work programs, financial services and family services.

3. Medical and psychiatric services, including access to family physicians, psychiatrists, crisis centres, brief and partial hospitalization, home treatment and regional hospitalization.
4. Co-ordination, including local offices or agencies to co-ordinate the planning and delivery of mental health services within each geographic area and encouragement of collaboration among service providers.
5. Advocacy services to assist persons served by the system in enforcing their rights in psychiatric hospitals, homes for special care, general hospital psychiatric units, nursing homes and community mental health facilities.

4. The Lieutenant Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. Regulations

5. This Act comes into force on the day it receives Royal Assent. Commence-
ment

6. The short title of this Act is the *Community Mental Health Services Act, 1987*. Short title

Bill 51

An Act to amend the Employment Standards Act

The Hon. G. Sorbara
Minister of Labour



1st Reading December 2nd, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to protect employees who refuse to contravene subsection 2 (2) of the *Retail Business Holidays Act*.

Bill 51

1987

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART XI-B

Retail Business Establishments

39e. An employee may refuse any work that is a contravention of subsection 2 (2) of the *Retail Business Holidays Act*.

Right to
refuse work
R.S.O. 1980,
c. 453

39f. Where an employer dismisses an employee who refuses any work that is a contravention of subsection 2 (2) of the *Retail Business Holidays Act*, an employment standards officer may order the employer to reinstate in employment the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement for loss of earnings or other employment benefits in an amount not exceeding \$4,000 that may be assessed by the employment standards officer against the employer.

Employment
standards
officer may
make order

2. Subsection 50 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 3, is further amended by inserting after "39c" in the second line "39f".

3. Subsection 53 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 4, is further amended by inserting after "39c" in the second line "39f".

4. Subsection 57 (1) of the said Act is amended by adding thereto the following clause:

(ea) has exercised a right to refuse work under section 39e.

Commence-
ment

5. This Act shall be deemed to have come into force on the 2nd day of December, 1987.

Short title

6. The short title of this Act is the *Employment Standards Amendment Act, 1987*.

Bill 51

(Chapter 7
Statutes of Ontario, 1988)

An Act to amend the Employment Standards Act

The Hon. G. Sorbara
Minister of Labour



<i>1st Reading</i>	December 2nd, 1987
<i>2nd Reading</i>	December 9th, 1987
<i>3rd Reading</i>	January 7th, 1988
<i>Royal Assent</i>	January 7th, 1988

Bill 51

1987

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART XI-B

RETAIL BUSINESS ESTABLISHMENTS

39e. An employee may refuse any work that is a contravention of subsection 2 (2) of the *Retail Business Holidays Act*.

Right to
refuse work
R.S.O. 1980,
c. 453

39f. Where an employer dismisses an employee who refuses any work that is a contravention of subsection 2 (2) of the *Retail Business Holidays Act*, an employment standards officer may order the employer to reinstate in employment the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement for loss of earnings or other employment benefits in an amount not exceeding \$4,000 that may be assessed by the employment standards officer against the employer.

Employment
standards
officer may
make order

2. Subsection 50 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 3, is further amended by inserting after “39c” in the second line “39f”.

3. Subsection 53 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 4, is further amended by inserting after “39c” in the second line “39f”.

4. Subsection 57 (1) of the said Act is amended by adding thereto the following clause:

(ea) has exercised a right to refuse work under section 39e.

Commence-
ment

5. This Act shall be deemed to have come into force on the 2nd day of December, 1987.

Short title

6. The short title of this Act is the *Employment Standards Amendment Act, 1988*.

Bill 52

An Act to amend the Consumer Reporting Act

The Hon. W. Wrye

Minister of Consumer and Commercial Relations



1st Reading December 2nd, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Act provides that where information about a consumer is requested from or given by a consumer reporting agency, the consumer is entitled, in certain circumstances, to be given notice of the fact.

The proposed section 10a is intended to clarify that notice is to be given in all situations wherein there is a business interest. Subsection 10 (2) is rewritten to clarify a technical point. Currently, under subsection 10 (3), when a person does a credit check, he or she is required to give the consumer notice when an application for credit is made. The rewritten subsection covers the situation when a credit check is done in anticipation of offering credit to a consumer.

The Act currently does not require notice to be given in circumstances set out in subsections 8 (1) (pursuant to court orders, written instructions, etc.) and 8 (3) (limited information to government agencies and the police). These exceptions to the extent that they do not refer to business interests continue to apply for the clarification provision.

Section 11 of the Act sets out information that consumer reporting agencies must provide to consumers. The clause being added to subsection 11 (1) of the Act is an addition to the information to be provided to consumers.

Bill 52**1987****An Act to amend the Consumer Reporting Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 10 (2) of the *Consumer Reporting Act*, being chapter 89 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(2) No person shall request or obtain a consumer report,

Notice of
intention to
get consumer
report

(a) containing personal information about a consumer;
or

(b) on the basis that the person is considering extending credit to a consumer who has not, at the time of the request, made application for credit,

unless that person first gives written notice of the fact to the consumer and, where the consumer so requests, informs the consumer of the name and address of the consumer reporting agency supplying the report.

2. The said Act is amended by adding thereto the following section:

10a.—(1) No person shall,

Supplying list
of names

(a) supply a list of names and criteria to a consumer reporting agency in order to obtain an indication of the names of the persons named in the list who meet the criteria; or

(b) in any way other than as described in clause (a), obtain information about a consumer from a consumer reporting agency,

without first notifying in writing each person named on the list or about whom information is being obtained that such a list is being submitted or that information is being requested and,

where any person affected so requests, informing that person of the name and address of the agency involved.

Exception
where
compliance
with
subs. 10 (3)

(2) Clause (1) (b) does not apply to a person obtaining information about a consumer under subsection 10 (3) where the person has complied with subsection 10 (3).

Restriction
on consumer
reporting
agency

(3) No consumer reporting agency shall provide information about any person entitled to be notified under subsection (1) or subsection 10 (2) unless the agency has reasonable grounds to believe that the person requesting the information is not in contravention of subsection (1) or 10 (2), as the case may be.

Supplying list
of criteria

(4) No consumer reporting agency that receives,

(a) a list of criteria and a request to provide the names of persons who meet the criteria; or

(b) a request for names of persons so that information may be inferred about those persons,

shall provide the name of any person without first notifying that person in writing of the request and the name and address of the person making the request.

Non-
application

(5) This section does not apply where information is requested or provided for the purposes referred to in clause 8 (1) (a), (b) or (c) or in the circumstances set out in subsection 8 (3).

3. Subsection 11 (1) of the said Act is amended by adding thereto the following clause:

(ba) the name and address of every person on whose behalf the file has been accessed.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Consumer Reporting Amendment Act, 1987*.

Bill 52

(Chapter 40
Statutes of Ontario, 1988)

An Act to amend the Consumer Reporting Act

The Hon. W. Wrye
Minister of Consumer and Commercial Relations



<i>1st Reading</i>	December 2nd, 1987
<i>2nd Reading</i>	June 21st, 1988
<i>3rd Reading</i>	June 29th, 1988
<i>Royal Assent</i>	June 29th, 1988

Bill 52**1987****An Act to amend the Consumer Reporting Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 10 (2) of the *Consumer Reporting Act*, being chapter 89 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (2) No person shall request or obtain a consumer report, Notice of intention to get consumer report
- (a) containing personal information about a consumer; or
 - (b) on the basis that the person is considering extending credit to a consumer who has not, at the time of the request, made application for credit,

unless that person first gives written notice of the fact to the consumer and, where the consumer so requests, informs the consumer of the name and address of the consumer reporting agency supplying the report.

2. The said Act is amended by adding thereto the following section:

- 10a.**—(1) No person shall, Supplying list of names
- (a) supply a list of names and criteria to a consumer reporting agency in order to obtain an indication of the names of the persons named in the list who meet the criteria; or
 - (b) in any way other than as described in clause (a), obtain information about a consumer from a consumer reporting agency,

without first notifying in writing each person named on the list or about whom information is being obtained that such a list is being submitted or that information is being requested and,

where any person affected so requests, informing that person of the name and address of the agency involved.

Exception
where
compliance
with
subs. 10 (3)

(2) Clause (1) (b) does not apply to a person obtaining information about a consumer under subsection 10 (3) where the person has complied with subsection 10 (3).

Restriction
on consumer
reporting
agency

(3) No consumer reporting agency shall provide information about any person entitled to be notified under subsection (1) or subsection 10 (2) unless the agency has reasonable grounds to believe that the person requesting the information is not in contravention of subsection (1) or 10 (2), as the case may be.

Supplying list
of criteria

(4) No consumer reporting agency that receives,

- (a) a list of criteria and a request to provide the names of persons who meet the criteria; or
- (b) a request for names of persons so that information may be inferred about those persons,

shall provide the name of any person without first notifying that person in writing of the request and the name and address of the person making the request.

Non-
application

(5) This section does not apply where information is requested or provided for the purposes referred to in clause 8 (1) (a), (b) or (c) or in the circumstances set out in subsection 8 (3).

3. Subsection 11 (1) of the said Act is amended by adding thereto the following clause:

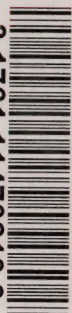
- (ba) the name and address of every person on whose behalf the file has been accessed.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Consumer Reporting Amendment Act, 1988*.



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